MICHIGAN CASE LAW UPDATE

CAP 2019 Seminar

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VENUE

People v McBurrows, 504 Mich 308 (2019)

- Issue: whether Monroe County is a proper venue for the charge against defendant of delivery of a controlled substance causing death, MCL 750.317a.
- Court of Appeals held: (1) the statute under which defendant was charged, MCL 750.317a, was merely a sentencing enhancement statute, and that the only alleged criminal act committed by defendant occurred in Wayne County; and (2) that venue was not proper under MCL 762.5 because there was no evidence that defendant inflicted a mortal wound or administered a poison.
- MSC affirmed that Monroe County was not the proper venue. (1) venue was not proper under MCL 762.5 because no mortal wound; (2) venue not proper under MCL 762.8 because 2 or more acts not done in perpetration of felony in Monroe, (3) MCL 750.317a is not merely a penalty enhancement, but it is a crime with its own elements that is distinct from the crime established in MCL 333.7401.

FOURTH AMENDMENT

People v Larry Mead, 503 Mich 205 (2019)

- Mr. Mead was the passenger in a car that was pulled over. He was ordered out of the vehicle and his backpack was searched.
- MSC held "A passenger's personal property is not subsumed by the vehicle that carries it for Fourth Amendment purposes. Accordingly, *People v LaBelle*, 478 Mich 891 (2007), was overruled; in its place, the following standard applies: a person may challenge an alleged Fourth Amendment violation if that person can show under the totality of the circumstances that he or she had a legitimate expectation of privacy in the area searched and that his or her expectation of privacy was one that society is prepared to recognize as reasonable."

People v Jennifer Marie Hammerlund, ___ Mich ___, MSC No. 156901 (July 23, 2019)

MSC reverses and remands to TC to determine whether statements and BAC are subject to suppression.

Court concluded Ms. Hammerlund did not surrender her Fourth Amendment rights when she interacted with law enforcement at her doorway because she consistently maintained her reasonable expectation of privacy throughout the encounter, and further, the entry was not justified under the "hot pursuit" exception to the warrant requirement. The warrantless arrest was unreasonable under *Payton.*

People v Rodriguez, 327 Mich App 573 (2019)

- Issue: whether there was valid consent for police officers to search Mr. Rodriguez and, his co-defendant, Tonya Tique-Diaz's apartment and, if so, whether Ms. Tique-Diaz's consent was the product of coercion and duress.
- Court of Appeals affirmed denial of motion to suppress and found Mr. Rodriguez's claim that he did not consent to the search to be incredible. First, the police officer testified that consent was given and second, there was a recording of their conversation.
- The Court also rejected Mr. Rodriguez's argument that the police coerced Ms. Tique-Diaz into consenting by threatening to call CPS and relied on the police officer's version of events.

People v Stricklin, 327 Mich App 592 (2019)

- Interlocutory appeal of an order suppressing the results of a warrantless blood draw.
- The Court of Appeals reversed and held: "A defendant may always consent to a warrantless search. Defendant admitted during the evidentiary hearing that he fully understood his choices under the implied consent law and made an informed, reasoned decision. "
- **"Having to make a choice between two undesirable options does not render defendant's express consent to the blood draw coercive and involuntary."**

People v Anthony, 324 Mich App 24 (2019)

- While on routine patrol, two officers drove up to where Mr. Anthony's car was parked without their lights activated. The trial court found the officer's testimony that the car was parked "in the middle of the street" to be false. As police car approached, officer smelled marijuana.
- The Court of Appeals reversed trial court order suppressing evidence from stop. The Court found that there was no 4th amendment search or seizure until the officer smelled the burned marijuana. The officer's action in driving up next to the truck and smelling the marijuana did not implicate the 4th amendment.
- Judge Gleicher dissented and agreed with the trial court that the stop was pretextual. Judge Gleicher noted that the trial court specifically found the police officer's testimony about the vehicle impeding traffic to be pretextual and that the majority opinion ignored the fact that the vehicle was seized when the officers pulled alongside to investigate the "impeding" violation.
- No appeal to MSC.

EVIDENCE

People v Thorpe and Harbison, 504 Mich 230 (2019)

Harbison

- Expert testimony: "diagnosed" the complainant with "probable pediatric sexual abuse" without any physical findings to support that conclusion.
- Holding: examining physicians cannot testify that a complainant has been sexually assaulted or has been diagnosed with sexual abuse without physical evidence that corroborates the complainant's account of sexual assault or abuse because such testimony vouches for the complainant's veracity and improperly interferes with the role of the jury."
- NOTE: This was unpreserved issue.

Thorpe

Expert testimony: children only lie about sexual abuse 2% to 4% of the time. Stated on redirect to rebut testimony elicited on cross-examination that children can lie and manipulate.

Holding: expert witnesses may not testify that children overwhelmingly do not lie when reporting sexual abuse because such testimony improperly vouches for the complainant's veracity.

NOTE: This error was preserved.

People v William Dawun Edwards, 328 Mich App 29 (2019)

- Mr. Edwards sought the admission of specific acts of violence by the decedent that he knew about at the time of the shooting to show his reasonable apprehension of harm and argued the trial court erred by not excluding evidence of his alleged criminal sexual conduct against his daughter.
- COA: reversed and held (1) alleged act of violence by decedent against Mr. Edwards was admissible and (2) alleged acts of violence by decedent against third part each required individual consideration
- COA also rejected claim regarding 404b evidence (Mr. Edward's prior CSC) and concluded evidence was probative of his motive to commit the crime.
  - Relevant factual background: daughter had moved into decedent's home where Mr. Edwards also lived. Mr. Edwards was made that decedent had allowed her to move in.

CONFRONTATION

People v Olney, 327 Mich App 319 (2019)

- MCL 768.27c allows the admission of hearsay statements to law enforcement concerning injuries, domestic violence, or other threats of violence.
- COA held that MCL 768.27c does not require that complainant-declarant be unavailable.
- The Court also held that, although the use of MCL 768.27c may violate the confrontation clause at trial, it does not at a preliminary exam.
- The right to confrontation only applies at trial.

DOUBLE JEOPARDY

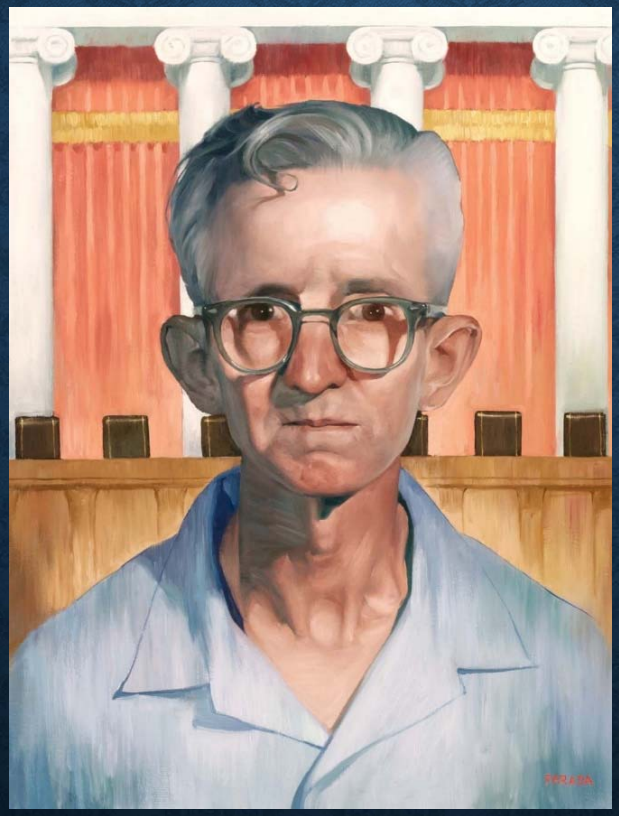
People v Davis, 503 Mich 984 (2019)

- Mr. Davis argued that his convictions violated the constitutional prohibition against double jeopardy because the crimes of AWIGBH and aggravated domestic assault have contradictory intent elements.
- Court of Appeals, in a published decision, held that defendant was improperly convicted "for a single act under two statutes with contradictory and mutually exclusive provisions" and vacated defendant's conviction for aggravated domestic assault.
- MSC: COA erred relying on mutually exclusive verdicts issue and remanded the case for consideration of Mr. Davis's double jeopardy argument.

People v Shelton Ali, ___ Mich App ___, No. 341121 (June 4, 2019)

- DHHS gets involved after allegations of sexual assault by Mr. Ali against his daughter. CPA referral and proceedings happen but court denies termination of parental rights.
- That proceeding does not foreclose the later CSC-I proceedings.
- Holding: Factual findings made by a court in a child protective proceeding do not have collateral estoppel effect in a subsequent criminal proceeding.

INEFFECTIVE ASSISTANCE OF COUNSEL/RIGHT TO COUNSEL



People v Traver (On Remand), ___ Mich App ___ (COA No. 325883) (May 23, 2019)

- COA considered whether trial counsel was ineffective for (1) failing to call character witnesses, (2) failing to call a tow truck driver to testify, (3) failing to retain an expert witness, and (4) for failing to move to quash the information. In addition, the Court also addressed a claim of ineffective assistance of for a failure to object to an instruction for felony firearm. Court of Appeals rejected these arguments and affirmed his convictions. None of claimed errors were outcome determinative.
- The Court, in a previous opinion, agreed with this claim and remanded for a new trial. However, the MSC reversed the COA on this issue and remanded the case for reconsideration. See *People v Traver*, 502 Mich 23 (2018) (holding trial courts must orally instruct the jury on elements of the offense but concluded the error did not require a new trial).
- Application pending in MSC.

People v Parkmallory, 935 NW2d 49 (Mem) (2019)

- COA reversed convictions for Felon in Possession of a Firearm and Felony Firearm, holding that trial counsel was ineffective for agreeing that client was legally ineligible to possess a firearm despite evidence that his rights had been automatically restored.
- MSC reversed and remanded for Saginaw CC to hold a Ginther hearing and for Mr. Parkmallory to demonstrate that he had paid all relevant fines and fees and his rights were in fact restored.

People v Hoang, 328 Mich App 45 (2019)

- Issue: Mr. Hoang argued he was denied his Sixth Amendment right to counsel because his court-ordered Vietnamese interpreter was not physically present during his pretrial meetings with his attorney.
- The Court of Appeals rejected this claim finding that such a claimed error, as applied to the facts of this case, does not violate MCL 755.19a and MCR 1.111 or the Sixth Amendment.

People v Juan T. Walker, ___ Mich App ___, No. 332491 (May 23, 2019)

- *Lafler* (IAC for failure to inform client of plea offers before trial) retroactivity
- *Lafler v Cooper* did not create a new rule and that it therefore applies retroactively. *Lafler* was "garden variety" *Strickland*.

JUDICIAL BIAS

People v Walker, 504 Mich 267 (2019)

- MSC entered an opinion vacating Mr. Walker's convictions and remanded the case for a new trial with a different judge due to Judge Lillard's ad-lib deadlock jury instruction was unduly coercive because "(1) the instruction lacked constructive guidance to the jury on how to continue deliberating and break through the impasse and encouraged an antagonistic relationship among the jurors when it prompted them to single out any juror who was refusing to deliberate when there was no indication that a juror had refused to deliberate; (2) the instruction failed to remind the jurors that they should not give up their honestly held beliefs for the sake of reaching an agreement; (3) rather than simply instructing the jury to continue its deliberations, the instruction contained coercive language that telegraphed to jurors that failure to reach a verdict was not an option and suggested that jurors single out other jurors for refusing to deliberate when there was no indication that a juror had refused to deliberate; and (4) the trial court's conduct during the trial telegraphed that the court would not tolerate a hung jury."

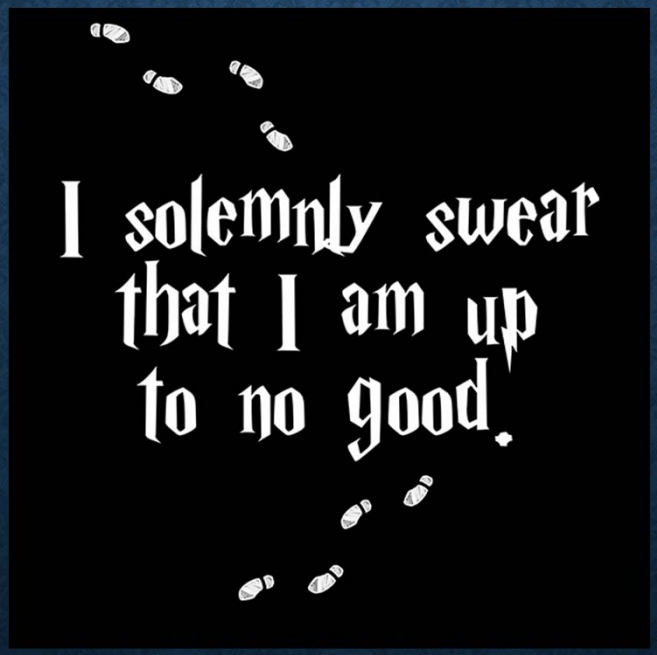
People v Swilley, 504 Mich 350 (2019)

- Issue: whether it is reasonably likely that the trial judge's questioning of witnesses improperly influenced the jury by creating the appearance of advocacy or partiality against a party.
- MSC: The judge's questions pierced the veil of judicial impartiality and impermissibly drilled into defendant's alibi defense and were inappropriately designed to assess the believability of witnesses presented in support of that defense.
- *See also, People v Granderson, MSC 154552, remanding for COA to reconsider judge's comments under Swilley*.

People v Lucker, 931 NW2d 13 (Mem) (2019)

- MSC reversed the judgment of Court of Appeals and vacated sentence and remanded for resentencing before a different judge. 10-20 year sentence where guidelines were 0-17 months.
  - Judge based departure on inaccurate information stating Mr. Lucker had been convicted of 38 different crimes in 10 years.
  - Judge said "You belong in a cage, where I intend to send you"
- *See also, People v Granderson, MSC 154552, remanding for COA to reconsider judge's comments under Swilley*.

PLEA PROCEEDINGS



People v Coleman and Roberts, 327 Mich App 430 (2019)

- Facts: Ms. Roberts moved to withdraw her plea because she was not informed her that her conviction of unlawfully imprisoning a minor would require her to register under SORA. Court only permitted her to withdraw part of her plea and not the entire plea agreement.
- Court of Appeals held Roberts should have been afforded the right to withdraw her entire plea based upon the defect in the plea-taking process. The trial court abused its discretion in severing the plea against Roberts's wishes.

People v Brinkey, 327 Mich App 94 (2019)

- COA held second guilty plea was not understandingly, knowingly, voluntarily, and accurately made the trial court abused its discretion by denying defendant's motion to withdraw his guilty plea.
  - Trial court failed to inform Mr. Brinkley of his rights, as it had properly done at the first plea hearing
  - Trial court did not describe what the "prior plea" was and the terms changed between the first and second plea. As a result, the terms of the agreement were unclear.

People v Thompkins, 503 Mich 952 (2019)

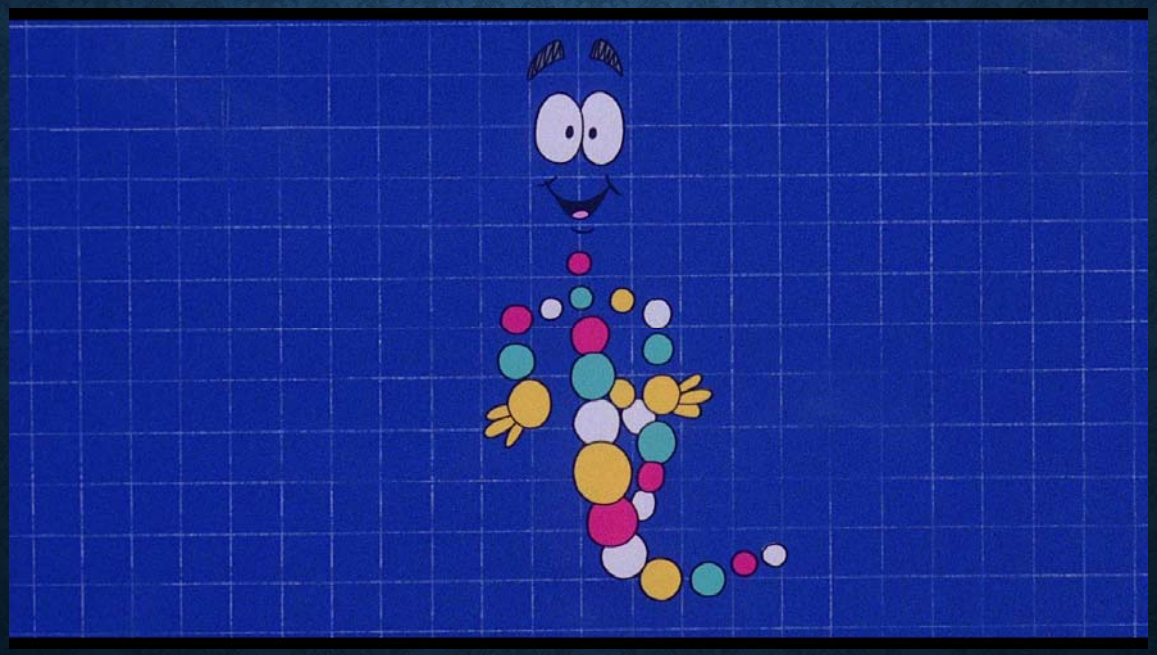
- Reversed Court of Appeals and remanded for plea withdrawal opportunity where client was effectively deprived, through no fault of his own, of the opportunity to have appointed appellate counsel file a timely trial court motion to withdraw plea.

NEWLY DISCOVERED EVIDENCE

People v Corley, 503 Mich 1004 (2019)

- MOAA grant on whether the trial court abused its discretion by declining to grant a new trial on grounds of newly discovered evidence, and in particular, whether the trial court erred in concluding that the newly discovered evidence would not make a different result probable on retrial.
- MSC entered order vacating the Court of Appeals opinion affirming his convictions and instead remanded for a new trial. The Court concluded the trial court did not make findings of fact that are owed deference. It also concluded its holding that the witness is not credible solely as a result of his criminal conviction was erroneous. The Court, however, noted this was an "unusual case."

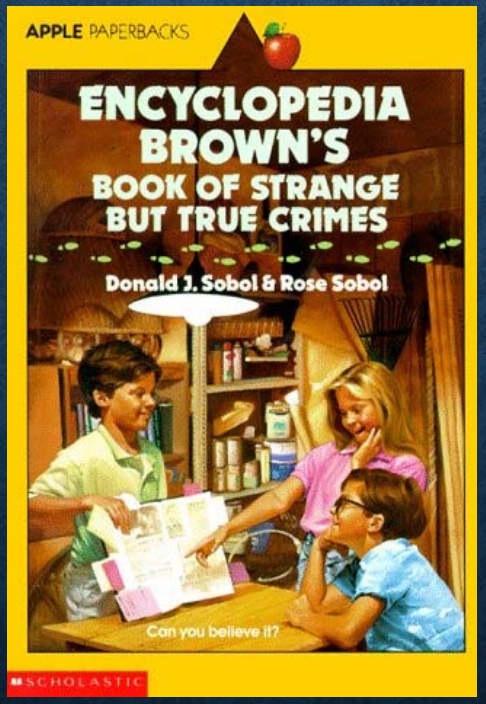
DNA



People v Urban, 931 NW2d 365 (Mem) (2019)

- DNA report says "In the absence of identical twins or close relatives, it can be concluded to a reasonable degree of scientific certainty that the DNA profile of the major donor to item [number and description] and from [number and description corresponding to either defendant or the victim] is from the same individual."
- On Appeal, Mr Urban argued that the scientist's DNA testimony violated the principles of *People v Coy*, 243 Mich App 283, 294 (2000), which held that evidence of a potential match between a subject's DNA sample and DNA found on evidence was "inadmissible absent some accompanying interpretive evidence regarding the likelihood of the potential match." That is, "some qualitative or quantitative interpretation must accompany evidence of [a] potential [DNA] match." *Id*. at 302.
- Court of Appeals affirmed in a published opinion. See *People v Urban*, 321 Mich App 198 (2017).
- MSC vacated the COA opinion portion on DNA and held that the phrase "to a reasonable degree of scientific certainty" is neither qualitative nor quantitative and is meaningless and potentially misleading. Result Affirmed.

CRIMES


APPLE PAPERBACKS
ENCYCLOPEDIA BROWN'S
BOOK OF STRANGE BUT TRUE CRIMES
Donald J. Sobol & Rose Sobol
Can you believe it?
SCHOLASTIC

People v Shae Lynn Mullins, MSC No. 157116

- MOAA grant on (1) whether MCL 722.633(5), which criminalizes making a false report of felony child abuse, applies to non-mandatory reporters; (2) whether the phrase "intentionally makes a false report of child abuse or neglect" is broad enough to encompass a circumstance in which a child is intentionally enlisted for the purpose of falsely accusing another of abuse or neglect, see MCL 750.411a; *United States v Giles*, 300 US 41, 48-49; 57 S Ct 340; 81 L Ed 493 (1937); and (3) whether MCL 722.633(5) must be read in light of the common-law doctrine of the innocent agent. See Const 1963, art 3, § 7.
- MSC denied leave which keeps unpublished COA opinion in place. That held that non-mandatory reporters were included under MCL 722.633(5).

People v Willis, 504 Mich 905 (2019)

- On appeal, the Court of Appeals rejected Mr. Willis's argument that MCL 750.145c(2) requires the prosecution to prove that a defendant acted with the intent to produce child sexually abusive material. He argued he happened upon the victim outside his apartment and took advantage of the chance opportunity to lure the victim into his apartment and there was never a plan. As a result, according to Mr. Willis, there was not sufficient evidence that he "arranged for" child sexually abusive material as it is described by MCL 750.145c(2).
- MOAA grant but the Supreme Court denied leave. Took that opportunity to bring the issues to the attention of the legislature the possible unintended breadth of the statute. In particular, the COA's interpretation for the statute arguably raises age of consent from to 18 and expands liability for CSC offenses.

People v Worth-McBride, 504 Mich 889 (2019)

- MSC remanded case to the COA to consider (1) whether the defendant's due-process right to be informed of the nature of the charges against her was violated where the trial court convicted her as a principal of second-degree murder, MCL 750.317, and first-degree child abuse, MCL 750.136b(2), despite the prosecution proceeding solely on a theory that the defendant aided and abetted the victim's father in the commission of these crimes; and (2) whether the record evidence supports a finding that defendant was guilty as an aider and abettor and any other issue the Court of Appeals determines is necessary to resolve the issue we have remanded to it, in addition to any issues that the defendant raises that relate to the trial court's stated explanation for its verdict.

People v Lee, MSC No. 157176

- MOAA grant on whether there is sufficient evidence to for a rational trier of fact to conclude beyond a reasonable doubt that the defendant committed an "act" (likely to cause serious physical or mental harm to a child) as that term in used in MCL 750.136b(3)(b) (second degree child abuse).
- MSC denied leave to appeal, but issue has repeatedly come up recently.
  - See e.g., *People v Murphy*, 321 Mich App 355 (2017)

People v Moss, 503 Mich 1009 (2019)

- The Supreme Court, after holding arguments on the issue, entered an order remanding the case to the Court of Appeals for consideration as on leave granted to address "whether a family relation that arises from a legal adoption, see MCL 710.60(2) ('. . . After entry of the order of adoption, there is no distinction between the rights and duties of natural progeny and adopted persons. . .') (1) is effectively a 'blood' relation, as that term is used in MCL 750.520b – MCL 750.520e; or (2) is a relation by 'affinity,' as that term is used in MCL 750.520b – MCL 750.520e, see *Bliss v Caille Bros Co*, 149 Mich 601, 608 (1907); *People v Armstrong*, 212 Mich App 121 (1995); P*eople v Denmark*, 74 Mich App 402 (1977)."

People v Bruce and Nicholson, ___ Mich ___ MSC No. 156827-8 (July 25, 2019)

- Common-Law Offense of Misconduct in Office = "corrupt behavior by an officer in the exercise of the duties of his office or while acting under color of his office." *People v Coutu*, 459 Mich 348, 353 (1999)
- Supreme Court: granted leave to appeal to consider whether federal border patrol agents were "public officers" for purposes of the common-law crime of misconduct in office when they assisted in the execution of the search warrant.
- MSC: In a 4-3 decision, reversed COA and concluded the agents were public officers under the five-factor *Coutu* test. The court also concluded an oath is not necessary.

Bruce and Nicholson cont…

- (1) first factor is satisfied by MCL 764.15d, which permits federal agents to enforce Michigan law
- (2) The second factor is satisfied because police officers discharging their duties act for the state in its sovereign capacity
- (3) The third factor of a duty imposed by law is satisfied because agents are acting as Michigan law enforcement and Michigan police offices have duties defined by statute
- (4) Agents were acting as Michigan police officers and were supervised by them for the execution of the warrant.
- (5) Law permitting federal officers to enforce Michigan law has been around since 1999 and is not going anywhere.

Bruce and Nicholson cont…

- Dissenting opinions highlight problems with use of common law offenses
  - Due process and notice issues were not addressed or raised.
  - May make sense to rely on arguments in dissenting opinions as a means to challenge the application of MCL 750.505.

People v Terra Lee Haveman, ___ Mich App ___, No. 344825 (May 30, 2019)

- Interlocutory appeal on the intent requirement for leaving a child unattended in a vehicle.
- Issue: whether MCL 750.135a, which proscribes leaving children "unattended in a vehicle for a period of time that poses an unreasonable risk of harm or injury to the child or under circumstances that pose an unreasonable risk of harm or injury to the child," is a strict liability or general intent offense.
- COA held the Legislature intended to make MCL 750.135a a general intent crime. This intent can be implied despite the absence of language in the statute because strict liability offenses are disfavored and MCL 750.135a primarily bears the hallmarks of an offense requiring some level of intent. Therefore, in order to be convicted of leaving a child unattended in a vehicle and posing an unreasonable risk of harm, a defendant must have a general intent to do the proscribed physical act.

People v Roconda Singleton et al ___ Mich App ___, No. 343272 (October 15, 2019)

- This was a group of 10 CNAs being prosecuted for falsifying documents with their initials, signifying that had checked on a patient on a particular date and time when video footage showed they had not.
- Circuit court and Chief Judge did not bind over because documents were not medical records.
- COA reversed and held that the definition of medical record in the Medical Records Access Act and Public Health Code applied to the penal code *and* member location sheets were medical records. Remanded to see if there was probable cause defendants knew they were medical records.

DEFENSES

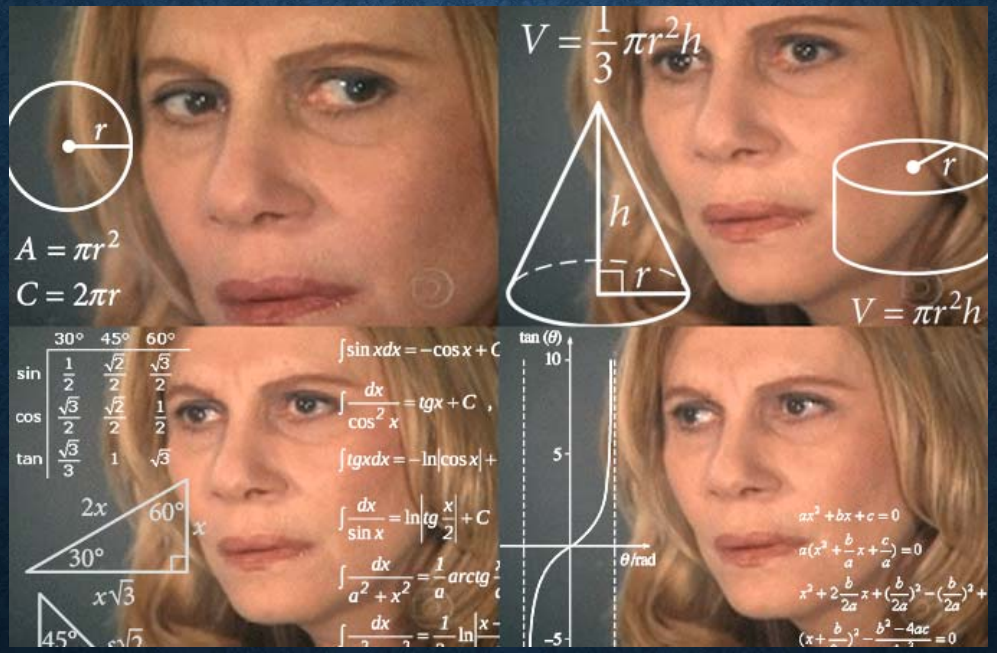
People v Stanton Wesley Morrison, ___ Mich App ___, No 344531 (June 18, 2019)

- Good Samaritan Law provides: (a) An individual who seeks medical assistance for himself or herself or who requires medical assistance and is presented for assistance by another individual if he or she is incapacitated because of a drug overdose or other perceived medical emergency arising from the use of a controlled substance or a controlled substance analogue that he or she possesses or possessed in *an amount sufficient only for personal use* and the evidence of his or her violation of this section is obtained as a result of the individual's seeking or being presented for medical assistance [MCL 333.7403(3)(a) (emphasis added)].
- COA held "an 'amount sufficient only for personal use' requires a factual determination of what amount a specific person regularly takes. This requires a case-by-case application of the language based on each individual defendant's personal use habits. If a defendant possesses an amount of a controlled substance that he would regularly take, the Good Samaritan law offers him protection from prosecution. If a defendant possesses an amount of a controlled substance larger than an amount he would regularly consume, the Good Samaritan law offers him no protection."

People v Haynie, 327 Mich App 555 (2019)

- Sufficiency of Insanity Defense
- COA: Affirmed convictions and concluded "[w]hile defendant presented three experts whose testimony supported the conclusion that defendant was legally insane at the time of the assault, the prosecution impeached the witnesses by calling into question the reliability of their assessments through the possibility that defendant lied to the doctors. It is the role of the jury, not this Court, to weigh the evidence and the credibility of witnesses." Court also noted testimony by complainant that Mr. Haynie acted normally and of police officers who testified he complied with their requests.

JURY INSTRUCTIONS



People v Miller, 318 Mich App 719 (2019)

- Case concerning the instructions for the elements of identity theft.
- COA: The trial court did not err in failing to instruct the jury that it must find that defendant committed all the elements on the day he signed up for service. The prosecution was not required to prove timing as an element of the offense and the court properly instructed the jury that it was required to find that the elements occurred within a specific time period.

People v Haynie, 327 Mich App 555 (2019)

- Issue: whether assault and battery is a lesser included offense of assault with intent to murder.
- COA: assault and battery is not a necessarily included lesser offense of assault with intent to murder. Rather, the Court concluded that misdemeanor assault and battery is a cognate lesser offense of assault with intent to commit murder because all of the elements of misdemeanor assault and battery are not included within the greater offense of assault with intent to murder.
  - Judge Gleicher dissented and would have held that assault and battery is a lesser included offense of AWIM.
- MSC granted leave on this issue.

FUNDING FOR EXPERTS

People v Donald Willie Williams, ___ Mich App ___, No. 341703 (May 23, 2019)

- Facts: Trial court denied request for approximately $42,000 of funds for experts to hold a *Miller* hearing. The trial court concluded this request excessive and, instead, provided $2,500.
- Court of Appeals reversed and remanded to the trial court to consider *People v Kennedy*, 502 Mich 206, 210; 917 NW2d 355 (2018), which held that constitutional standards govern a request for public funding for an expert and that an individual requesting such an expert must show a "reasonable probability" that the expert is necessary to their defense.

People v Propp, ____ Mich App ____, No. 343255 (October 17, 2019)

- Mr. Propp was not entitled to appointment of state-funded expert in order to assert the affirmative defense of erotic asphyxiation.
- The question at trial was whether Mr. Propp intended to kill his wife or whether death was an unintended result of erotic asphyxiation.
- Note: MSC lv app filed in November 2019.

SENTENCING-JAIL CREDIT

People v Allen, ___ Mich App ____, No. 343255 (October 1, 2019)

- *Mr. Allen was not entitled to jail credit for time served in previous arrests before parole detainer was signed.*
- *Relevant excerpt:* This case presents a question that *Idziak* did not squarely address. What happens when a parolee is held before sentencing because he is unable to furnish bond and no parole detainer is in effect? *Court essentially holds analaysis is the same whether a detained is issued or not.*
- Mr. Allen was jailed twice before a parole detainer was signed after his third arrest.

SENTENCING- COSTS
People v Robert Lewis, 503 Mich 162 (2018)

- Court cannot impose attorney's fees without first making findings of fact to support total. Cannot be done as an average.

SENTENCING

People v Beck, ___ Mich ___, No. 152934 (July 29, 2019)

- Cert petition pending in SCOTUS
- Due process precludes sentencing increase of a sentence based on a sentencing judge's finding by a preponderance of the evidence that Mr. Beck had committed the crime the jury had acquitted him of.
- MSC remanded for COA to apply *Beck* to OV-11 (penetrations) in *People v Brooks*, No. 157516 (November 26, 2019)
- Notable, but unpublished, Court of Appeals decisions citing *Beck:*
  - People v Reiher, Docket No. 343234 (November 21, 2019)- if jury hangs, that is different than acquittal and those charged offenses are fair game for consideration at sentencing
  - People v Lynn Anthony Morrie, Docket No. 344160 (December 3, 2019)- held that *Beck* applied to scoring OVs, specifically OV-12, contemporaneous felonious criminal acts

SENTENCING- OV SCORING
People v Carter, 503 Mich 221 (2019)

- Mr. Carter fired three shots consecutively through a door. He was convicted of assault with intent to commit great bodily harm.
- Mr. Carter was scored 10 points for OV-12.
- COA held only one trigger pull was needed for conviction and the other two trigger pulls were scorable "acts" under OV-12. MSC disagreed.
- MSC said record showed prosecutor relied on all three shots to convict Mr. Carter of AWIGBH. Don't hold outright that multiple gunshots are never separate acts.