

Resources for staying abreast on case law

- Michigan Supreme Court homepage:
<https://courts.michigan.gov/courts/michigansupremecourt/clerks/pages/opinions.aspx>
- Michigan Supreme Court YouTube Channel
- State Bar of Michigan e-Journal: <https://www.michbar.org/e-journal>
- Follow our justices and courts on Twitter
- CDRC Michigan Appellate Summaries: email Heather Waara at hwaara@sado.org

Litigating Race

Start with [this advice](#) from Professor Eve Primus

- Sentencing
 - Mitigation- Look at Professor Peter Hammer's work on spatial racism
 - Which variables are over-weighted on the guidelines?
- Amending the fleeing jury instruction
- Challenging a plea or prior confession

Michigan Case Law by topic December 2019 through November 29, 2020

Search and Seizure

- *People v Towne*, 505 Mich 542 (2019)
Police exceeded scope of knock and talk and performed a warrantless search and seizure. Evidence obtained must be suppressed.
- *People v Kelly*, 505 Mich 933 (2019)
If handcuffed, then *Miranda*.
- *People v McJunkin*, 505 Mich 883 (2019)
Car owner's 4A rights in third party's garage.
 - *Cites to People v Larry Mead*, 503 Mich 205 (2019)
Car passenger's 4A rights.
- *People v Hughes*, 504 Mich 855 (2019)- argued on 10/7/20
Validity of cellphone search, pending in MSC.
- *People v Pagano*, 505 Mich 938 (2019)- argued on 11/10/20
Validity under 4A of officer making a traffic stop based only on information provided by an informant, pending in MSC.

Evidence

- *People v Thorpe and Harbison*, 504 Mich 230 (2019)
Improper expert testimony in CSC cases
Has been applied to 6.500 case in *People v Rainbolt*, 505 Mich 881 (2019)
 - *People v Hawkins*, 505 Mich 937 (2019): Detective testimony
 - *People v Uribe*, 941 NW2d 381 (2020) pending in MSC
- *People v Bennett*, 505 Mich 961 (2020)

Admission of rap videos was outcome determinative.

- *People v Taylor*, 505 Mich 962 (2020)- argued on 11/10/20
Admissibility of other acts evidence in CSC case, “striking similarity” rule, pending in MSC.
- *People v Del Cid*, Docket No. 342402
Physician’s opinion that a complainant was diagnosed with “possible sexual abuse” is admissible only if supported by physical findings, otherwise it is plain error.
- *People v Fontenot, Jr*, Docket No. 350391
Datamaster logs are nontestimonial and are admissible as business records. Ronayne Krause dissent (says they are unreliable).

Confrontation

- *People v Olney*, Docket No. 343929 (remand from MSC)
MCL 768.27c(6) applies at preliminary examination and right of confrontation does not apply at preliminary examination
- *People v Jemison*, ___ Mich ___ (2020) (Docket No. 157812): Face-to-face confrontation is required under constitution. Expert W appearing by video was not sufficient (UNLESS W unavailable and prior chance for cross-examination).

Ineffective Assistance of Counsel/Right to Counsel

- *People v Valden White*, 331 Mich App 144 (2020)
Lafler application for pre-trial plea offer.

Identification

- *People v Sammons*, 505 Mich 31 (2020)
Suggestive ID when police show a witness shown the two suspects in separate interview rooms, making later identifications unreliable, and error was not harmless.

Plea Proceedings

- *People v Rydzewski*, 331 Mich App 126 (2020)
Prosecutor approval not required for mental health court.
NOTE: plea agreement stated “no mental health”; did not indicate outright no to mental health court
- *People v Moss*, 503 Mich 1009 remand to COA; COA Docket No. 338877
Mr. Moss could not withdraw plea to CSC III because adoptive sister is sufficient blood relation under Adoption Code
- *People v Gilmore*, 505 Mich 965 (2020)- entitled to restitution hearing if it is not a factor in the plea agreement
- *People v Owen*, (Docket No. 160150)- argued 11/12/20; Did sheriff make an objectively reasonable mistake of law by thinking someone was speeding when they weren’t? (thought speed limit was 25 and it was 55).

Double Jeopardy

- *People v Terrance*, 504 Mich 963 (2019)- argued in MSC on 10/8/20
Whether acquittals of first and second-degree murder necessarily decided with respect to a later brought charge of torture? Pending before MSC.
- *People v Barber*, 505 Mich 937 (2019)
When assault by strangulation and assault with intent to commit great bodily harm, both contrary to MCL 750.84, arise from a singular factual situation, it is double jeopardy to convict a defendant of both offenses.

Crimes

- *People v Wood*, ___ Mich ___ (2020) (Docket No 159063)
Jury tampering cannot occur if the “juror” at issue has been summoned for jury duty but has not yet participated in a case.
- *People v Anderson*, ___ Mich App ___ (2020) (Docket No. 345601)
For purposes of CSC-1, a penetration occurs when an involves an intrusion between the butt cheeks, even if there is no entry into the anal canal per se.
- *People v Bean*, 504 Mich 975 (2019); *People v Hampton*, 504 Mich 939 (2019)
Bean – Whether second degree child abuse is an adequate predicate “other felony” to sustain a charge of CSC-I, when the alleged act of child abuse is a sexual penetration that is the same sexual penetration that forms the basis of the CSC-I charge.
Hampton – Whether the Legislature intended to elevate to felony-murder those instances of first-degree child abuse in which the only act of abuse is the child’s murder.
- *People v Krukowski* (Docket No. 160263)- argued on 11/10/20:
Does “willful abandonment” in MCL 750.136b(1)(c) encompass a parent’s failure to seek professional medical care. Is there sufficient evidence of second-degree child abuse?
- *People v Wang*, ___ Mich ___ (2020) (Docket No 158013): evidence was sufficient to support Ms. Wang’s conviction for unauthorized practice of medicine but not Medicaid fraud.
- *People v Kenny*, ___ Mich App ___ (Docket No. 347090)
Under the retail fraud statute, a suspect need not leave the store with property to be charged and convicted as only an *intent* to steal is required.

Pre-trial, Trial and Post-Trial Procedure

- *People v Brown*, 937 NW2d 696 (2020)
A defendant must be permitted to present witnesses at a preliminary examination if she so chooses.
- *People v Spaulding*, ___ Mich App ___ Docket No. 348500 (2020)
In rejecting a defendant’s claim of ineffective assistance of counsel, the Court said that a waiver of the right to testify at trial can be implied from the

record, but the better practice is for counsel to make a record of asking the defendant whether he wished to testify.

- *People v Davis*, ___ Mich App ___ Docket No. 343432 (2020)
The Court held that the lower court just “cleared” the courtroom of disruptive individuals supporting the complainant rather than “closing” the courtroom. In any event, no plain error would have occurred even if considered a closure.
- *People v Furline*, 505 Mich 16 (2020)- argued November 2020
For severance purposes, defenses are not necessarily antagonistic when both defendants could reasonably be found guilty of the offense. Concurrence says “other defense theories in other aiding-and-abetting cases may be antagonistic enough to require severance.”
- *People v Kabongo*- Batson lives on!, is it automatic reversal or harmless error? argued November 2020

Defenses

- *People v Reichard*, 505 Mich 81 (2020)
If an affirmative defense applies to the predicate felony for a felony-murder charge, the defendant should be allowed to use it.
- *People v Flynn*, Docket No 346668 (unpub op from COA on August 20, 2020):
It’s time to revisit *Carpenter*

Jury Instructions

- *People v Haynie*, 943 NW2d 383 (2020)
Assuming without deciding that assault and battery is a lesser included of AWIM, the trial court here erred by refusing to give the lesser instruction where a rational view of the evidence supported a conviction for A&B.
- *People v Rajput*, 940 NW 2d 67 (2020)
Whether defendant was initial aggressor was question for jury; evidence presented sufficient support for self-defense instruction so trial court erred in not giving the instruction.

Funding for Experts

- *People v Propp*, 330 Mich App 151 (2019)
Funding not necessary for expert on erotic asphyxiation.

Sentencing

- *People v Beck*, 504 Mich 605 (2019)
Acquitted conduct at sentencing
 - *People v Roberts*, ___ Mich ___ (#161263)
Remand for resentencing where OV9 and departure based on acquitted conduct (acquittal on AWIM in a gun possession case).
 - *People v Stokes*, ___ Mich App ___ (2020); PSIR with acquitted conduct does not violate *Beck*

- *People v Barnes*, __ Mich App __ (2020) (Docket No. 348038): Can rely on alleged conduct for departure rationale
- *People v Betts* (SORA, pending in MSC)
- *People v Manning* (LWOP and 18 year olds)- argued 11/12/20
- *People v Dumback*, 330 Mich App 631 (2019)
Cannot score OV-3 where death is an element of the offense (i.e. leaving the scene of an accident that caused a death).
- *People v Posey*, __ Mich App __ (2020): MCL 769.34(10) remains good law post- *Lockridge* citing *Schrauben* and *Ames*
- *People v Latham*, __ Mich App __ (2020): OV11 was misscored and trial court granted request to amend OV11 from 25 to 0. No resentencing held because judge said sentence was within the new guidelines range and judge would not change the sentence. 2-1 decision, COA says resentencing not required. Judge Jansen dissents saying this is a sentence based on inaccurate information and resentencing is required.
- *People v Vanderpool*, __ Mich __ (Docket No. 158486): Trial court cannot extend probationary term after term expires.
- *People v Derek Smith*, __ Mich __ (Docket No. 160995): FF must run consecutively with a felony conviction wherein the defendant necessarily possessed a firearm (not AWIGBH, for example)

Juvenile Life Without Parole

- *People v Turner*, 505 Mich 954 (2020): At a *Miller* resentencing, trial court may “exercise its discretion to resentence a defendant on a concurrent sentence if it finds that sentence was based on a legal misconception...”
- *People v Masalmani*, 943 NW2d 359 (2020): no resentencing when TC treated mitigating factors as aggravating factors in maintaining LWOP sentence
- *People v Stovall*, __ Mich App __ (2020): second-degree murder plea to life with parole pre-*Miller* (successive 6.500)
- *People v Hubert Marshall*, unpub op from COA (Docket No. 345927) The factors in *People v Snow*, 386 Mich 586 (1972)/ *People v Wines*, 323 Mich App 343 (2018) apply for sentencing a juvenile for something short of Mur1.

Michigan Supreme Court- orals assigned to January 2021 docket:

People v Gerald Magnant, People v John Francis Davis:

Knowledge requirement for violation of Tobacco Product Act; whether nonsupervisory employees are “transporters” under the same

People v Christopher Louis Sindone

Dual convictions for same conduct (second degree arson and preparation to burn a dwelling), double jeopardy question

People v Terry Lee Ceasor

IAC for failure to seek funds for an expert

People v Juan Martinez III

Did the trial court err forbading evidence of complainant's prior threat to Mr. Martinez? If so, was error prejudicial?

People v Muhammad Altantawi

Whether a juvenile was subject to custodial interrogation without being *Mirandized*