

STATE OF MICHIGAN
IN THE SUPREME COURT

(On Argument on the Application for Leave to Appeal from the Court of Appeals, Fitzgerald, P.J., Bandstra
and Schuette, JJ.)

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

-vs-

RONALD JAMES PLUNKETT,

Defendant-Appellee,

Supreme Court No.: 138123

Court of Appeals No.: 284943

Lower Court No. 07-001471-FC

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STATEMENT OF JURISDICTION

Defendant-Appellee does not dispute that this Court had jurisdiction to hear this application under MCR 7.301(A)(2), that it was timely filed under MCR 7.302(C)(2) and thus consideration of the Court of Appeals December 16, 2008, Opinion is properly within its jurisdiction.

ISSUE PRESENTED

Issue

DID THE CIRCUIT COURT REVERSIBLY ERR IN, AND THE COURT OF APPEALS ERR IN AFFIRMING, QUASHING THE BINDOVER AS TO THE TWO COUNTS RELATED TO DELIVERY OF HEROIN WHEN THE UNDISPUTED EVIDENCE SHOWS THAT DEFENDANT DID NOT, AT ANY POINT, POSSESS THE HEROIN OR DELIVER THE HEROIN TO ANYONE, OR HAVE ANY KNOWLEDGE THAT IT WOULD BE OR WAS BEING DELIVERED, AND, RATHER, THAT ONLY CO-DEFENDANT CORSON EVER POSSESSED THE HEROIN AND DELIVERED SAME, UNDISPUTEDLY WITHOUT KNOWLEDGE OF THE DEFENDANT, TO THE DECEASED, WHERE THE STATUTE IN QUESTION PLAINLY AND UNAMBIGUOUSLY APPLIES TO “DELIVERY” AND NOT “CONSTRUCTIVE DELIVERY”?

**The trial court answered this question: No.
The Court of Appeals answered this question: No.
Plaintiff-Appellant answers this question: Yes.
Defendant-Appellee answers this question: No.**

INTRODUCTION

This Court's Order setting this matter for argument on the application included an authorization for supplemental briefing. Accordingly, Defendant-Appellee submits this offering, which offers an entirely alternative approach to the issue before the Court. While Defendant-Appellee believes that his initial offering was well grounded in law and fact, and presented the only view of this case which properly respects and adheres to the plain language enacted by the Legislature in the controlling statutes, this Court is obviously interested in exploring the question, and it is the task of the Appellee to provide the necessary authority and briefing to assist the Court in that effort. Defendant-Appellee thus presents this offering to review the decisions of jurisdiction which have considered in a reported case the concept of joint possession or, as our Court of Appeals has called it, "social sharing" first recognized in *United States v Swiderski*, 548 F2d 445 (2nd Cir, 1977), in the event that the Court may find some of them useful or, perhaps, profit from being able to view the trends seen in addressing this question across other jurisdictions.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Consistent with this Court's direction in regards to supplemental briefing, Defendant-Appellee will rely on the factual statement in his Answer to Application and not reprint same here.

ARGUMENT

Issue

DID THE CIRCUIT COURT REVERSIBLY ERR IN, AND THE COURT OF APPEALS ERR IN AFFIRMING, QUASHING THE BINDOVER AS TO THE TWO COUNTS RELATED TO DELIVERY OF HEROIN WHEN THE UNDISPUTED EVIDENCE SHOWS THAT DEFENDANT DID NOT, AT ANY POINT, POSSESS THE HEROIN OR DELIVER THE HEROIN TO ANYONE, OR HAVE ANY KNOWLEDGE THAT IT WOULD BE OR WAS BEING DELIVERED, AND, RATHER, THAT ONLY CO-DEFENDANT CORSON EVER POSSESSED THE HEROIN AND DELIVERED SAME, UNDISPUTEDLY WITHOUT KNOWLEDGE OF THE DEFENDANT, TO THE DECEASED WHERE THE STATUTE IN QUESTION PLAINLY AND UNAMBIGUOUSLY APPLIES TO “DELIVERY” AND NOT “CONSTRUCTIVE DELIVERY”?

The trial court answered this question: No.

The Court of Appeals answered this question: No.

Plaintiff-Appellant answers this question: Yes.

Defendant-Appellee answers this question: No.

Standard of Review

This Court reviews a circuit court's ruling on a motion to quash de novo to determine if the district court abused its discretion in binding the defendant over for trial. *People v Jenkins*, 244 Mich App 1, 14; 624 NW2d 457 (2000).

The Approach in This Supplement

Defendant-Appellee's primary position is found in his answer to application. As same comports directly with the plain language of the statutory mandates (and thus contrasts sharply with the Prosecution's position), that should, consistent with this Court's strict tenants regarding statutory interpretation, completely answer the question. Nonetheless, as this Court has

expressed interest in the matter and, indeed, is routinely very diligent in fully considering the holdings of other state and federal courts on analogous issues, and as a seminal federal decision, *United States v Swiderski*, 548 F.2d 445 (2nd Cir, 1977), has, at various points, been a foundational aspect of the consideration of this case below, the Court might well appropriately consider how *Swiderski* has been viewed, in the thirty years since its arrival, in other jurisdictions. Accordingly, this offering will address first how the other states that have viewed a *Swiderski* question have addressed it, followed by a review of the reactions of other federal jurisdictions to the Second Circuit's decision in *Swiderski*.

Swiderski

Before commencing with this effort, a review of *Swiderski* itself might be useful and, accordingly, the comprehensive analysis of this case presented by the District of Columbia Court of Appeals in *Long v United States*, 623 A.2d 1144 (DC App, 1993) is offered here:

In *Swiderski*, the named defendant and his then fiancée, Maritza De Los Santos, jointly and simultaneously purchased a substantial quantity of cocaine for \$1,250. A short time later, they were arrested by officers of the Drug Enforcement Agency who had been conducting surveillance. Ms. De Los Santos had the cocaine and \$3,100 in her purse; Swiderski had an additional \$529 in his possession. 548 F.2d at 448. Although there was evidence that the defendants intended to distribute at least some of the cocaine to third parties, [FN8] the defendants denied such an intent, and contended in effect that they had been set up and that someone had

slipped cocaine into Ms. De Los Santos' handbag.

In his closing argument, the prosecutor argued that even if the defendants had purchased the cocaine merely with the intent to share it or "snort" it together, this would be sufficient to establish their intent to distribute. Over defense counsel's objection, the trial judge twice instructed the jury that giving or passing cocaine to a "friend" or "fianceé" constitutes "distribution." *Id.* at 448-49.

[FN9]

The court, in an opinion by Judge Mansfield, unanimously reversed the defendants' PWID convictions and remanded for resentencing on the lesser included offense of unlawful possession. The court concluded that the federal Comprehensive Drug Abuse Prevention and Control Act, viewed "as a whole," draws a sharp distinction between drug offenses of a commercial nature and illicit personal use of controlled substances. *Id.* at 449-50. According to the court, Congress provided for more severe penalties for trafficking and distribution because "such conduct tends to have the dangerous, unwanted effect of drawing additional participants into the web of drug abuse." *Id.* at 450.

It was the court's view, on the other hand, that "where two individuals simultaneously and jointly acquire possession of a drug for their own use, intending only to share it together, their only crime is personal drug abuse ..." *Id.* "Since both acquire possession from the outset and neither intends to distribute the drug to a third person, neither serves as a link in the chain of distribution." *Id.* Thus, the court concluded, "the mere existence of joint possession by two closely related persons--here an engaged couple who later married one another--is alone not enough to provide the basis for such an inference [of intent to distribute]." *Id.*

Emphasizing that Congress sought "to distinguish between one who acts as a link in the chain of distribution and one who has already acquired possession of his own use," 548 F.2d at 451, the court rejected the government's argument that the abolition of the so-called "buyer's agent" defense [\[FN10\]](#) demonstrated that Congress also intended to punish (as PWID) the sharing of drugs between two persons who simultaneously acquire joint possession of the drugs. *Id.* In the court's view, [t]he agent who delivers to his principal performs a service in increasing the distribution of narcotics. Without the agent's services the principal might never come into possession of the drug. Purchasers who simultaneously

acquire drugs jointly for their own purpose, however, do not perform any service as links in the chain; they are the ultimate users. *Id.* Accordingly, the court held that the trial judge's instructions were erroneous, reversed the defendants' PWID convictions, and remanded for resentencing.

FN8. Aside from the amount of contraband at issue and the defendants' possession of large sums of cash, there was testimony that Ms. De Los Santos had stated that the cocaine was not good enough for the defendants' personal use but that they had a buyer for it. *Swiderski, supra*, 548 F.2d at 448.

FN9. The trial court's second instruction to this effect was given in response to a note from the jury specifically requesting "[c]larification of the following: If both defendants possess the drug (*i.e.*, one paid for it and it was found in the other's handbag) can 'intent to distribute' mean giving the drug to the other or must third parties be involved?" *Swiderski, supra*, 548 F.2d at 449.

FN10. Prior to 1970, one who acted as a procuring

agent of the purchaser was not viewed under federal law as having engaged in the sale of unlawful drugs. *See, e.g. Lewis v United States*, 119 US App DC 145, 148; 337 F 2d 541, 544 (1964) (Burger, J.), *cert. denied*, 381 US 920; 85 S Ct. 1542; 14 L Ed 2d 440 (1965). In the 1970 legislation, Congress proscribed transfers of controlled substances "whether or not there exists an agency relationship," thereby effectively eliminating the "purchasing agent" defense. *See United States v Porter*, 764 F2d 1, 11-12 (1st Cir, 1985); *United States v Marquez*, 511 F2d 62, 64 (10th Cir, 1975). The District of Columbia definition of distribution, as we have seen, likewise applies "whether or not there exists an agency relationship." D.C.Code § 33-501(9) (1988), quoted at page 8, *supra*. *Cf. State v Bressette*, 136 Vt 315; 388 A2d 395, 397-98 (1978) (one who acts solely on behalf of the buyer may not be convicted of sale of unlawful drugs). *Long* at 1150-1151.

Minnesota

The Minnesota Supreme Court addressed a case with superficial similarities to this matter

in *State v Carithers*, 490 NW2d 620 (Minn, 1992). The case addressed two consolidated factual scenarios. In the first, a husband and wife rode together to buy drugs, with only the husband actually exiting the car and buying the drugs. The husband returned to the car with the drugs, they drove home, and both shot up with heroin, the wife dying as a result. *Id.* at 621. In the second, the wife, alone, went to buy heroin, returned home with them, and then shared them with her husband, who injected himself and died. *Id.* Each surviving spouse was charged with felony murder, with the case turning on whether or not there was an underlying felony of drug delivery that would serve to support the murder charge. *Id.* at 621-622. The Minnesota Supreme Court held that there was not such a delivery, finding that “if a husband and wife jointly acquire the drug,” there was no delivery between them. *Id.* at 622. This was, in the second case, an extension of *Swiderski*, as the husband did not accompany the wife to purchase the drugs but, in both cases, the Court was clear that when the venture was a couple’s joint effort to acquire and use drugs, there was not an intra-couple delivering.

Here, of course, a number of factual distinctions exist between this case and *Carithers*. Most importantly, both of the *Carithers* defendants actually purchased the drugs. Moreover, while the husband in the second *Carithers* scenario was held to have jointly possessed the drugs, without being attendant for the purchase trip, this was not because of any supplying of money (*Carithers* is silent on who financed the transactions, *id.* at 621) but, rather, based on a shared intent that the husband and wife planned to use the drugs themselves and together. Here, where Defendant-Appellee did not purchase nor handle the heroin and, indeed, there was no intent at all that he would ever use it, this matter sits even more removed from any delivery between Defendant and either Corson or the decedent.

Iowa

The Iowa Supreme Court considered a *Swiderski* argument in *State v Moore*, 529 NW2d 264 (Iowa, 1995), where Defendant Moore was charged with delivery of methamphetamine to his wife, where the undisputed facts involved the defendant, alone, purchasing the drugs and then, at some point later, injecting them into his wife at her request. *Id.* at 265. Because the wife was totally uninvolved in the purchase of the drugs, the Iowa Court reasoned that (borrowing the Prosecution’s words here), the defendant was “a link in the chain of distribution.” *Id.* at 266-267. The Iowa Court also rejected the argument that contributing funds to purchase drugs would amount to constructive possession of them. *Id.* at 266. This holding is consistent with the *Swiderski* analysis, which focused on parties who jointly purchased and shared the drugs, and also supportive of the trial court’s ruling here, as, unlike the *Moore* defendant, Defendant-Appellee here both did not single-handedly purchase the heroin and then subsequently deliver it and, in fact, never even possessed the heroin at all. Moreover, as the trial court correctly held here, the mere funding of a purchase, without ever acquiring any drugs, does not amount to constructive possession of drugs held and used solely by another.¹

New Jersey

The New Jersey Supreme Court addressed a *Swiderski* issue in *State v Morrison*, 902 A2d 860 (NJ, 2006). Therein a defendant and his friend, traveling in the same car, pooled their money, found a drug dealer, and bought heroin, which killed the friend when he injected it. *Id.* at 862-863. The New Jersey Court held that:

¹ The Iowa Supreme Court followed its *Moore* holding in *State v Greene*, 592 NW2d 24 (Iowa, 1999), where there was no indication that the supposed “co-owner” of the drugs had any involvement in the purchase of them.

We accept the self-evident precept in [*State v Lopez*, 359 NJ Super 222, 233; 819 A2d 486 (App Div, 2003)] that "one cannot acquire something one already possesses" and thus two or more persons cannot "distribute to each other drugs they jointly possess." *Id.* at 233, 819 A.2d 486. We also accept the limited *Swiderski* principle that when "two individuals simultaneously and jointly acquire possession of a drug for their own use, intending only to share it together," they have not committed the crime of distribution. *Morrison* at 869.

While the New Jersey Court's theory of this case, one of joint possession by everyone in the car when drugs are bought, might seem to appeal to the Prosecution's viewpoint, it fails on the facts here. If the New Jersey Court's logic is accepted, there was no delivery between Defendant-Appellee and Corson. Thus, when Corson delivered to the deceased, Defendant-Appellee, having delivered to no one, was not in the "chain of distribution" but, rather, was alone on an off-shoot branch of that chain in the past (much as would be, of course, anyone else who bought drugs from Harold Spencer but then delivered them to no one else). Indeed, there is a serious question as to whether, even if the New Jersey decision was completely applied here, Defendant-Appellee would have possessed the heroin at all, as the entire *Morrison* decision is based on the premise that each party intended to "take control of his share of the heroin" when the buy was completed and, here, the record plainly indicates that only Corson ever took control of the heroin and that Defendant-Appellee had no share of, nor intent towards, any of the heroin

Corson bought from Harold Spencer.

California

In *People v Edwards*, 702 P2d 555 (Cal, 1985), the California Supreme Court addressed a situation where the defendant and his girlfriend, along with two others, Royce and Mullican, went looking for drugs in a car. The defendant (who was holding all of the money both he and his girlfriend possessed) gave Mullican money, and she exited the vehicle to make a buy. *Id.* at 556. Thereafter they all went to Mullican's home, where Mullican injected both the defendant and his girlfriend with heroin (with their consent), after which the girlfriend died. *Id.* The *Edwards* defendant was charged with delivery of heroin and second degree murder predicated thereon. *Id.* at 558. Without ever referenced *Swiderski*, the California Supreme Court arrived at an essentially identical analysis, noting that "there was substantial evidence that Royce suggested the heroin purchase, that defendant paid for the heroin with joint funds, and that the defendant and [his girlfriend] were "equal partners" both in the decision to make the purchase and in its consummation." *Id.* at 560. Accordingly, the Court held that such evidence, if believed (and the Court noted that a lot of evidence was conflicting) would have precluded a finding that the defendant delivered heroin to his girlfriend. *Id.*

Once again, there are two instructive points. The first is that, if there is a joint buy, then, at most, the parties thereto equally share and possess the drugs, provided that is there actual intent (in other words, the purchase is plainly for both of them and the plan is for them both to partake in using them). The second is that the mere supplying of money, alone, cannot amount to a delivery, particularly where such occurs in a scenario involving two parties acquiring drugs together.

Maine and Massachusetts

While state courts have routinely applied a *Swiderski* analysis in joint purchase situations, they have been rightly hesitant to extend it to joint growing and distribution operations. In *State v Toppan*, 425 A2d 1336 (Maine, 1981), the Maine Supreme Court addressed a situation where a defendant operated a marijuana growing operation and claimed a *Swiderski* joint ownership with various friends who helped with aspects of the growing operation. *Toppan* at 1338. Not surprisingly, the Court had no use for this argument, because the defendant had “participated in a joint venture to produce quantities of the drug for use by persons other than himself.” *Id.* at 1340, n 6.

Similarly, when faced with a case where a defendant, found carrying multiple pre-packaged amounts of cocaine, requested a jury instruction on *Swiderski* social sharing, and where there was neither a co-defendant or co-purchaser nor even a purchase (as the defendant was quite obviously a dealer, not a buyer), the Massachusetts Supreme Court held that it was proper to deny such an instruction. *Commonwealth v Johnson*, 602 NE2d 555 (Mass, 1992). From both of these cases the obvious teaching to be drawn is that *Swiderski* only applies where a joint purchase occurs and that, in such instances, there is no delivery, while if one purchases and then delivers to someone else, *Swiderski* is apt to prove of little utility.

District of Columbia

The District of Columbia Court of Appeals has also adopted the analysis of *Swiderski* in *Long v United States*, 623 A 2d 1144, 1150-1151 (DC App, 1993). While specifically accepting the holding of *Swiderski* in regards to joint purchases, the *Long* Court declined to extend it to a situation where Defendant Long, alone, had purchased drugs and brought them home to his

friends and was, by his own admission, about to distribute them to several people when a police battering ram interrupted his plans. *Id.* at 1151. Accordingly, the District of Columbia also joins the list of jurisdictions that accept a *Swiderski* analysis that would preclude a finding of Defendant-Appellee delivering heroin in this case.

Federal Holdings

Second Circuit

The Second Circuit, from which *Swiderski* originated, had distinguished between what *Swiderski* involved, a joint purchase with an intent to jointly possess and partake of the drugs, and the term that our Court of Appeals has used in *People v Schultz*, 246 Mich App 695; 635 NW2d 491 (2001), “social sharing.” In *United States v Wallace*, 532 F3d 126 (2nd Cir, 2008), the court held that when a defendant shared with a number of friends drugs that he himself had purchased, this was not “joint possession,” under *Swiderski* but, rather, a “social sharing.” As such, where the defendant had sole possession of the drugs originally, his delivery of drugs to others as ““his transfer of the drug to a third person, friend or not” would violate the prohibition on drug distribution.” *Wallace* at 131.

This holding, of course, makes perfect sense, lest a narrowly tailored exception, for joint purchase and partaking, be expanded to a multitude of situations where defendants might claim to just be “sharing,” rather than “selling,” drugs. It also, of course, does nothing to diminish the actual holding of *Swiderski*, and offers nothing that would inculcate Defendant-Appellee here.

First Circuit

In *United States v Rush*, 738 F2d 497 (1984), in addressing a multiple defendant marijuana distribution conspiracy, the First Circuit passed on the applicability of *Swiderski*. One

group of defendants in *Rush* claimed that their plan consisted only of jointly possession and sharing marijuana. The *Rush* court, similar, although much earlier than, to the Second Circuit in *Wallace*, suggested that “we express considerable skepticism concerning the applicability of a *Swiderski* defense to the facts of this case.” *Rush* at 514. That said, however, the First Circuit noted that “the *Swiderski* holding appears fully justified on the facts of that case,” but the court simply would not “approve its casual extension to situations where more than a couple of defendants and a small quantity of drugs are involved.” *Id.* Accordingly, though its holding speaks little to the facts of this case and, indeed, comports with what the Second Circuit would itself do years later, the First Circuit’s holding joins those affirming the validity of *Swiderski*.

Fourth, Fifth and Ninth Circuits

Both the Fourth and Fifth Circuits have considered *Swiderski* only as a raised defense where an individual, who purchased drugs by himself and obviously intended to distribute them, as indicated by the circumstances (amount in the Fourth Circuit, amount, packaging and weighing equipment in the Fifth Circuit) and, in the Fourth Circuit, the defendant’s own admission. *United States v Washington*, 41 F3d 917 (4th Cir, 1994); *United States v Speers*, 30 F 3d 605 (5th Cir, 1994). In both cases, of course, the trial court rejected such a defense which, as seen *supra*, was not a *Swiderski* defense at all, but rather a ham-handed attempt to extend *Swiderski* to situations where a person who singlehandedly purchased and possessed drugs attempted to excuse his subsequent efforts at distribution. Accordingly, if it is incorrect to say that the Fourth and Fifth Circuits rejected *Swiderski*, as the Fourth Circuit expressly declined to reach that question as unnecessary, *Washington* at 920, n 2, and the Fifth Circuit likewise held “we also need not pass on the validity of the *Swiderski* doctrine because, just as in *Wright*, the

doctrine does not apply to the facts of this case.

Both of these decisions referenced *United States v Wright*, 593 F2d 105 (9th Cir, 1979), which, like each of them, involved a person who, by themselves, went off to purchase drugs, and, after obtaining them, returned and gave the drugs to another. *Id.* at 108. Accordingly, none of these three decisions 1) does harm to the validity of *Swiderski*'s analysis or 2) speaks negatively toward Defendant-Appellee's position in this case.

District Court Cases

The rule clearly outlined above, that *Swiderski* is viable, but only where the parties jointly purchase with an intent to jointly partake², has been followed in the district courts as well. *United States v Martel*, 324 F Supp 24 (D Maine, 2004), saw the effort at a *Swiderski* defense derailed because, once again, not all of the supposed joint possessors were involved in the purchase. Similarly, an effort of an entire medical marijuana cooperative to raise a supposed *Swiderski* defense was easily disposed of as "apply *Swiderski* to a medical marijuana cooperative would extend *Swiderski* to a situation in which the controlled substance is not literally purchased simultaneously for immediate consumption," and the court declined, as have myriad other courts, to create such an extension. *United States v Cannabis Cultivators Club*, 5 F Supp 1086, 1100 (ND Calif, 1998).³

² Here, of course, there is no evidence that Defendant-Appellee intended to jointly partake. Accordingly, he cannot even be said to have possessed, much less distributed, the heroin. Nonetheless, the point is that his conduct is even farther removed from the drugs than seen in *Swiderski* but, *even if* this were not so, and he is imputed to have involvement with the heroin, his place in the chain of delivery fails to materialize under *Swiderski*

³ The United States Military Courts have also declined to extend *Swiderski* to 1) a situation where the drugs were jointly purchased, but then swallowed by a subject (in an effort to avoid police) and later jointly used [as, obviously enough, they were no longer jointly possessed

Conclusion

Even with the advent of Westlaw's Keycite, there are likely other *Swiderski* cases out there, though Defendant-Appellee has endeavored to fairly present all those he could find. From these arise a few easily discernable trends. First, both parties have to be present and involved in the purchase. The record indisputably shows that here. Second, the parties have to have an intent to share possession of the drugs. If the Plaintiff-Appellant's position is accepted here, and, again, Defendant-Appellee suggests that the record can only support that this question ends right here, as there is no evidence he ever possessed, or intended to possess, much less distributed or intended to distribute the heroin, then Defendant-Appellee would still meet the *Swiderski* test. Finally, the vast majority of courts have declined to extend *Swiderski* to other situations but, when these holdings are carefully examined, it becomes clear that what is occurring is *not* a rejection of *Swiderski* (which has not been, as far as Defendant-Appellee can find, rejected by any court as to its factual situation, as opposed to a situation with a recipient not present at the purchase) but, rather, a trend toward declining to extend *Swiderski* to situations where a party acquires drugs at one place and time and then later distributes them to others.

Here Defendant-Appellant believes this Court can, and should, under the plain statutory language applicable to this test, affirm the Court of Appeals well reasoned holding on the most sound basis possible, proper construction of the statute's language, which adheres to the words the Legislature did enact, not what the prosecution believes it should have enacted. Should this

when inside one party's digestive system] and, in another instance, shared with another not involved in the purchase, *United States v Manley*, 52 MJ 748 (Navy-Marine Ct App, 2000) and 2) where two persons jointly partook of drugs that had been previously purchased (and hidden in a concealed location) by only one of them. *United States v Ratleff*, 34 MJ 80, 82 (Ct Mil App, 1992).

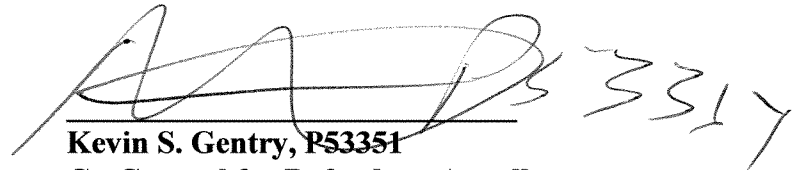
Court wish to proceed further, however, *Swiderski* forms a valid basis, agreed with in the vast majority of courts which have considered it on facts such as these (and not rejected by any courts on such facts) for finding that Defendant-Appellant himself undertook no delivery of the heroin and, thus, cannot be charged with the death that resulted from Corson's delivery of it to Tiffany Gregory.

RELIEF REQUESTED

WHEREFORE, Defendant-Appellee RONALD JAMES PLUNKETT, respectfully requests that this Honorable Court deny Plaintiff-Appellant's Application for Leave to Appeal or affirm the Court of Appeals December 16, 2008 Opinion and the Washtenaw County Circuit Court's Order Granting in Part and Denying in Part Defendant's Motion to Quash of February 25, 2008 and grant him such other relief as it finds consistent with equity and good conscience.

Respectfully Submitted:

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Dated: June 4, 2009