

**STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT**

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People of the State of Michigan,  
Plaintiff-Appellee,

Supreme Court No: 155849

v

Court of Appeals No: 330876

Shawn Cameron,  
Defendant-Appellant.

Circuit Court No: 13-1315 FH

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Brian L. Mackie (P25745)  
Washtenaw County Prosecutor  
200 N. Main, P.O. Box 8645  
Ann Arbor, MI 48107-8645  
734-222-6620

Marilena David-Martin (P73175)  
Attorney for Defendant-Appellant  
645 Griswold  
3300 Penobscot Building  
Detroit, MI 48226  
313-256-9833

**Plaintiff-Appellee's Brief in Response to  
Defendant's Application for Leave to Appeal**

Brian L. Mackie (P25745)  
Washtenaw County Prosecutor

By: Mark Kneisel (P49034)  
First Assistant Prosecutor  
P.O. Box 8645  
Ann Arbor, MI 48107-8645  
(734) 222-6620

### Counterstatement of Judgment Appealed From and Claim of Error

Defendant is applying for leave to appeal from the Court of Appeals published decision *People v Cameron*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2017). The Court of Appeals ruled that the imposition of court costs constitute a constitutional tax under MCL 769.1k(1)(b)(iii). The court also found that court costs do not violate the Distinct Statement Clause or the Separation of Powers Clause of the Michigan Constitution. The Court of Appeals did not err in holding that the tax was constitutional because court costs are not obscure, nor are they deceitful. Further, the court did not err in holding that there is no violation of the separation of powers because the Legislature has the right to statutorily delegate discretion to trial courts, including the ability to impose a tax on criminal defendants.

This Court should not grant leave because it is well established that courts can impose costs on defendants to cover the cost of holding a trial. MCL 769.1k(1)(b)(iii) provides clear guidance to trial courts in how to assess court costs, and also requires that the costs be reasonable. With these requirements, the imposition of court costs do not violate the Distinct Statement Clause because court costs are not obscure or deceitful, and court costs do not violate the Separation of Powers Clause because the Legislature can delegate the power to assess court costs to the trial court.

### Counterstatement of Question Presented

I. Does the assessment of court costs against Defendant pursuant to MCL 769.1k constitute a constitutional tax when the tax is not obscure or deceitful, and the tax is a legal delegation of authority from the Legislature to the trial courts?

Plaintiff-Appellee answers, "Yes."

Defendant-Appellant answers, "No."

Trial Court answered, "Yes."

Court of Appeals answered, "Yes."

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### Counterstatement of Facts

Defendant was convicted in 2014 of Assault with Intent to do Great Bodily Harm Less than Murder. His sentence included an order to pay a court cost of \$1,611. Defendant challenged in the imposition of court costs to the circuit court, which denied his motion. Defendant appealed the decision to the Court of Appeals, which affirmed the decision of the circuit court but remanded the case for consideration of the amount of court costs. The circuit court again found that the court costs were reasonable, providing the following basis for the costs:

“The Washtenaw County Trial Court previously established a factual basis for the court costs it has imposed on each felony case at the time of sentencing. The costs were computed based on the ten year average annual total court budget of \$16,949,292 multiplied by the average annual percentage of all filings which are felonies, i.e., 22%, which revealed the average annual budget for the Washtenaw Trial Court’s handling of all of its criminal felony cases. This amount was then divided by the average annual number of felony filings over [the] last 6 years (2,217) which resulted in the average court costs of handling each felony case as \$1,681. The state costs were subtracted (\$68) as well as an additional \$2, resulting in the sum of \$1,611 being assessed per felony case.”<sup>1</sup>

Defendant appealed again to the Court of Appeals, claiming that court costs are an unconstitutional tax. The Court of Appeals, in a published opinion, agreed that court costs are a tax, but found that the tax is constitutional.<sup>2</sup>

Defendant now applies for leave to appeal alleging that court costs are unconstitutional.

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<sup>1</sup> Washtenaw County Circuit Court Order on Remand Detailing Commutation of Court Costs, August 14, 2015.

<sup>2</sup> *People v Cameron*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2017) (Docket No. 330879).

## Argument

### **I. The assessment of court costs does not impose an unconstitutional tax upon criminal defendants because the tax is not obscure or deceitful, and is a legal delegation of power from the Legislature to the trial courts**

#### *Standard of Review*

This Court reviews Constitutional questions de novo.<sup>3</sup> Unless it is clearly apparent that a statute is unconstitutional, this Court should assume the statute is constitutional.<sup>4</sup> Further, the burden of proving that a statute is unconstitutional “rests with the party challenging it.”<sup>5</sup> Statutory interpretation should be reviewed de novo.<sup>6</sup> A statute should be construed as constitutional “unless it manifestly infringes some provisions of the constitution.”<sup>7</sup>

#### *Discussion*

##### **a. The assessment of court costs is a tax.**

The prosecution agrees with the Court of Appeals—as it did in its concession to the lower court—that court costs are a tax. Court costs raise revenue, are not proportionate to the service provided, and are involuntarily imposed on a criminal defendant.<sup>8</sup>

##### **b. Court costs are constitutional because the costs are not obscure or deceitful and therefore do not violate the Distinct Statement Clause.**

Taxes should be plainly stated in order to comply with the Distinct Statement Clause. This Court has stated that the intent of the Distinct Statement Clause is “to prevent the Legislature from being deceived in regard to any measure for levying taxes, and from furnishing

<sup>3</sup> *People v Conat*, 238 Mich App 134, 144; 605 NW2d 49 (1999).

<sup>4</sup> *In re RFF*, 242 Mich App 188, 205; 617 NW2d 745 (2000).

<sup>5</sup> *DeRose v DeRose*, 469 Mich 320, 326; 666 NW2d 636 (2003).

<sup>6</sup> *People v Konopka*, 309 Mich App 345, 356; 869 NW2d 651 (2015).

<sup>7</sup> *People v Harper* 479 Mich 599, 621; 739 NW2d 523 (2007).

<sup>8</sup> *Bolt v City of Lansing*, 459 Mich 152, 158-59; 587 NW2d 264 (1998).

money that might by some indirection be used for *objects not approved by the Legislature.*”<sup>9</sup> Even if a statute creates a tax, it does not violate this principle unless it is obscure or deceitful.<sup>10</sup>

Court costs comply with the Distinct Statement Clause because they are not obscure or deceitful. In fact, the Legislature consciously provided the means for trial courts to assess court costs. After this Court’s decision in *People v Cunningham*,<sup>11</sup> the Legislature passed 2014 PA 352, an amendment to MCL 769.1k(1)(b)(iii), to curtail the effects of *Cunningham*.<sup>12</sup> The Court of Appeals in the present case stated that “the amendments occasioned by 2014 PA 352, which ushered in MCL 769.1k(1)(b)(iii), did not produce an effect that was ‘obscure or deceitful.’”<sup>13</sup> The court noted that the statute does not require a court to separately calculate the actual costs for each case, and it does not limit the amount of costs a court may impose—the statute still provides restrictions, however, by limiting the costs to those reasonably related to the costs incurred by the court.<sup>14</sup> The Legislature unequivocally endorsed the assessment of court costs by amending the statute, further showing that there is no deceit in imposing the tax, and that the tax is not obscure.

**c. Court costs are constitutional because the Legislature can delegate powers to trial courts without violating the Separation of Powers Clause.**

The Legislature has the power to statutorily delegate certain powers to the trial court, including the power to sentence a criminal defendant.<sup>15</sup> In the present case, the Court of Appeals held that the Legislature can delegate the power to assess court costs to the trial courts.<sup>16</sup> The

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<sup>9</sup> *Westinghausen v People*, 44 Mich 265, 267; 6 NW 641 (1880) (emphasis added).

<sup>10</sup> *Dukesherer Farms, Inc. v Director of the Dept. of Agric.*, 73 Mich App 212, 221; 251 NW2d 278 (1977).

<sup>11</sup> *People v Cunningham*, 496 Mich 145; 852 NW2d 118 (2014).

<sup>12</sup> *Konopka*, 309 Mich App at 354-55.

<sup>13</sup> *Cameron*, \_\_\_ Mich App at \_\_\_; *slip op* at 8 (quoting *Gillette Commerical Operation North America v Dept of Treasury*, 312 Mich App 394, 447; 878 NW2d 891 (2015)).

<sup>14</sup> *Cameron*, \_\_\_ Mich App at \_\_\_; *slip op* at 8.

<sup>15</sup> *People v Hall*, 396 Mich 650, 658; 242 NW2d 377 (1976).

<sup>16</sup> *Cameron*, \_\_\_ Mich App at \_\_\_; *slip op* at 10.



Michigan Constitution does not require an “absolute separation of powers.”<sup>17</sup> As the Court of Appeals correctly noted, MCL 796.1k(1)(b)(iii) provides “adequate guidance to the circuit courts by allowing them to impose ‘any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case.’”<sup>18</sup> The Court of Appeals further said that “[a]lthough defendant bemoans the lack of a specified methodology for calculating court costs, the plain language of 769.1k(1)(b)(iii) suggests that a court should impose costs in accordance with the cost of an average case . . . requiring a factual basis for the assessed costs further ensures that the circuit courts do not exercise unfettered discretion under MCL 769.1k(1)(b)(iii).”<sup>19</sup> The statute “provides for an award of costs that is *not* independently authorized by the statute for the sentencing offense.”<sup>20</sup>

The reasoning of the Court of Appeals in *Cameron* was further adopted in the recently decided *People v Shenoskey*, where the Court of Appeals found MCL 769.1j(1)(a) to also be a constitutional tax.<sup>21</sup> The court found that, like in *Cameron*, the statute at issue represented a reasonable delegation of the power to the trial courts, and that there was no issue with the fact that the felony cost was not explicitly labeled as a tax in the statute.<sup>22</sup> The Court of Appeals in the present case also stated that a limited grant of authority to one branch of government from another that does not create encroachment at the expense of the other is constitutional.<sup>23</sup>

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<sup>17</sup> *Cameron*, \_\_\_ Mich App at \_\_\_; *slip op* at 10.

<sup>18</sup> *Cameron*, \_\_\_ Mich App at \_\_\_; *slip op* at 11.

<sup>19</sup> *Cameron*, \_\_\_ Mich App at \_\_\_; *slip op* at 11.

<sup>20</sup> *Konopka*, 309 Mich App at 365.

<sup>21</sup> *People v Shenoskey*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (No. 332735, rel’d 6/8/2017).

<sup>22</sup> *Shenoskey*, \_\_\_ Mich App at \_\_\_; *slip op* at 2.

<sup>23</sup> *Cameron*, \_\_\_ Mich App at \_\_\_; *slip op* at 9.

**Relief Requested**

The People of the State of Michigan respectfully request that this Court deny Defendant's Application for Leave to Appeal.

Respectfully submitted,

Brian L. Mackie (P25745)  
Washtenaw County Prosecutor

By: /s/ Mark Kneisel  
Mark Kneisel (P49034)  
First Assistant Prosecutor  
P.O. Box 8645  
Ann Arbor, MI 48107-8645  
(734) 222-6620

and

Kate Kerbrat  
Student Intern

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