

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JOHN ANTONYA MOSS,

Defendant-Appellant.

Supreme Court No. 156616

Court of Appeals No. 338877

Berrien County Circuit Court
No. 15-005091-FH

**PLAINTIFF-APPELLEE'S
SUPPLEMENTAL BRIEF**

Steven Pierangeli (P67320)
Assistant Prosecuting Attorney
Berrien County Prosecutor's Office
811 Port Street
Saint Joseph, Michigan 49085
(269) 983-7111 ext. 8311

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

- I. Should this Court adopt the definition of “affinity” used in *People v Armstrong* and used by the trial court?

Plaintiff-Appellee answers, “Yes.”
Defendant-Appellant answers, “No.”
The trial court answered, “Yes.”

- II. Alternatively, are adopted family members related by blood under the criminal sexual conduct chapter of the Michigan Criminal Laws?

Plaintiff-Appellee answers, “Yes.”
Defendant-Appellant answers, “No.”
The trial court answered, “No.”

COUNTERSTATEMENT OF FACTS

The People accept the Defendant-Appellant's statement of facts. The People also stipulate to the use of the appendix filed by the Defendant-Appellant.

ARGUMENT

I. This Court should adopt the definition of “affinity” used in *People v Armstrong* and used by the trial court.

The Michigan Legislature “intended to protect young persons from sexual contact by persons with whom they have a special relationship, such as relatives” when the criminal sexual conduct statute was created. *People v Armstrong*, 212 Mich App 121, 127; 536 NW2d 789 (1995). The definition of “affinity” should be interpreted with this intent in mind.

In *Armstrong*, the Court of Appeals undertook the task of interpreting “affinity” as it applied to stepsiblings in the criminal sexual conduct statutes. The *Armstrong* Court considered the definition given in *Bliss v Caille Bros Co.*, 149 Mich 601; 113 NW 2d 317 (1907). This Court in *Bliss* was interpreting “affinity” in the context of a judge presiding over a case where the judge was related by consanguinity or affinity to a party. *Id.* at 607. The Court stated “affinity” was defined as the “relation existing in consequence of marriage between each of the married persons and the blood relatives of the other,…” *Id.* at 608. However, the Court in *Bliss* stated the doctrine used to interpret the meaning of “affinity” was “for the purpose only of determining whether, in support of a high public policy affecting the administration of the law, a juror or judge should be regarded as indifferent or biased.” *Id.*

Bliss was decided decades prior to the enactment of the criminal sexual conduct statutes. Given the limited basis for which the *Bliss* Court was considering the term “affinity,” the Court of Appeals in *Armstrong* set out to interpret the term in the context of the criminal sexual conduct statutes. In determining the meaning of “affinity” in that context, the Court “must consider both the plain meaning of the critical word or phrase and its placement and purpose in the statutory scheme.” *People v. Bylsma*, 315 Mich App 363, 378; 889 NW2d 729 (2016),

quoting *People v. Jackson*, 487 Mich 783, 791; 790 NW2d 340 (2010). “Statutory language should be given a reasonable construction, considering its purpose and the object sought to be accomplished.” *Armstrong*, 212 Mich App at 127, citing *People v. Jones* 190 Mich App 509, 513; 476 NW2d 646 (1991). *Armstrong* went on to state “[i]n fashioning the criminal sexual conduct statute, MCL §750.520a *et seq*, the Legislature intended to protect young persons with whom they have a special relationship, such as relatives.” *Id.*

The criminal sexual conduct statutes do not give a specific definition to the term “affinity.” MCL §750.520a. However, the term is “neither an unusual nor esoteric word; nor does the [criminal sexual conduct] statute use the term in an uncommon or extraordinary context.” *People v. Denmark*, 74 Mich App 402, 408; 254 NW2d 61 (1977). In *Armstrong*, the Court of Appeals examined the word in the context of a criminal sexual contact between a stepbrother and stepsister. *Armstrong* indicated the term is “not capable of a precise definition.” 212 Mich App at 125; citing to *In re Estate of Bordeaux*, 37 Wash2d 561, 564; 225 P2d 433 (1950). “Rather, at common law, whether someone was related to another by affinity depended upon the legal context presented.” *Armstrong*, 212 Mich App at 125.

When interpreting a statute, “provisions ... shall be construed to the fair import of their terms, to promote justice and to effect the objects of the law.” MCL §750.2. A court should construe a word undefined in the statute according to its “common and approved usage. In doing so, resorting to the dictionary definition is appropriate.” *Armstrong*, 212 Mich App at 127. The Court of Appeals in *Armstrong* referred to the Random House College Dictionary and its definition of the term affinity as meaning a “relationship by marriage or ties other than those of blood.” *Id.*

This definition is appropriate and applicable to the instant case. The Michigan Adoption Code, MCL §710.21, and case law have reiterated that an adoption creates a “new and complete substitute relationship after adoption.” *In re Handorf*, 285 Mich App 384, 388; 776 NW2d 374 (2009). This relationship by adoption fits squarely within the definition of a relationship by “ties other than those of blood.” This interpretation protects adopted children in line with the legislative intent to “protect young persons with whom they have a special relationship, such as relatives.” *Armstrong*, 212 Mich App at 127. Had the legislature wanted to restrict the statute to a relationship solely on marriage, the term “marriage” would have been used rather than “affinity.”

The Court’s adoption of the *Armstrong* definition of “affinity” will not make other sections of the criminal sexual conduct statutes superfluous. Cases could arise in which the perpetrator of a sexual assault is related to the victim through adoption and not a member of the same household, as in MCL §750.520b(1)(b)(i) and MCL §750.520c(1)(b)(i). For example, the aunt or uncle of a child through adoption who does not live with the child commits criminal sexual conduct against that child.

II. Alternatively, adopted family members are related by blood under the criminal sexual conduct chapter of the Michigan Criminal Laws.

Alternatively, if the victim is found not to be related by affinity to the defendant, this Court should find the victim was related by blood.

The holding in *People v Zajackowski*, 493 Mich 6; 825 NW2d 554 (2012), does not apply to the facts of the instant case due to the different facts involved. *Zajackowski* did not involve the relationship between siblings related by adoption, and did not analyze the statute in accordance with the Adoption Code and the clear declaration of the Legislature that an adopted child is considered a child by blood. MCL §710.60.

The issue before the Court in *Zajackowski* was whether a presumption of legitimacy under the civil law could satisfy the element of “by blood” for prosecution under MCL §750.520b(1)(b)(ii) where the presumption was rebutted by DNA testing which determined that the defendant and the victim were not biologically related. This case, on the other hand, does not involve a rebuttable presumption. Instead, it involves the transformation of rights and duties that occur by operation of law when a child is adopted – an issue upon which *Zajackowski* is not controlling.

CONCLUSION AND RELIEF REQUESTED

The trial court correctly denied the defendant's motion to withdraw his plea by finding the victim and defendant were related by affinity for the purposes of criminal sexual conduct in the 3rd degree through adoption. In the alternative, the adoption of the victim and defendant by the same person placed both of them in the lineal and collateral bloodline of the adoptive parent. Under either interpretation, the element for Criminal Sexual Conduct in the 3rd Degree pursuant to MCL §750.520d that the defendant be related by blood or affinity to the victim was satisfied.

Accordingly, the People ask this Court to deny defendant's application for leave to appeal.

Respectfully Submitted,

/s/ Steven Pierangeli
Steven Pierangeli (P67320)
Assistant Prosecuting Attorney

Dated: 11/14/18