

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-v-

JOHN ANTONYA MOSS,

Defendant-Appellant.

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**BERRIEN COUNTY PROSECUTOR**  
Attorney for Plaintiff-Appellee

**CHRISTINE A. PAGAC (P67095)**  
Attorney for Defendant-Appellant

**Supreme Court No. 156616**

**Court of Appeals No. 338877**

**Circuit Court No. 15-005091-FH**

**AMENDED DEFENDANT-APPELLANT'S  
ORAL ARGUMENT SUPPLEMENTAL BRIEF**

**STATE APPELLATE DEFENDER OFFICE**

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**Statement of Jurisdiction**

Defendant-Appellant relies upon the Statement of Jurisdiction in the supplemental brief filed on his behalf by appointed counsel.

**Statement of Question Presented**

- I. Did MCL 710.60 change the meaning of blood in the sexual assault statutes?

Trial Court answered "No."

Court of Appeals made no answer.

Defendant-Appellant answers, "No".

## Argument

### **I. MCL 710.60 did not change the meaning of blood in the sexual assault statutes.**

This Court has asked whether MCL 710.60(1), relating to adoptive parents, also created a blood relationship as that term is used in the Penal Code. It did not.

MCL 710.60(1), part of the Probate Code, by its terms applies to the rights and duties of the adoptive parents. “The person or persons adopting the adoptee then become the parent or parents of the adoptee under the law as though the adopted person had been born to the adopting parents and are liable for all of the duties and entitled to all of the rights of the parent.” The purpose of the Adoption Code is, as it relates to this section, “to achieve permanency and stability for adoptees as quickly as possible.” MCL 710.21a(d)<sup>1</sup>. The purpose of the Penal Code, in contrast, is to define crimes. *People v Smith*, 423 Mich 427, 437 (1985). It does not set forth rights or duties.

Only statutes which relate to the same persons or things, or which have a common purpose, are to be read *in pari materia*. The Adoption Code and the Penal Code do not have a common purpose, and should not be said to apply to the same persons since to do so would require the Penal Code to be read *in pari materia* with every statute since the Penal Code applies to all people.

Applying other familiar and well-established rules of statutory construction, the plain meaning of the critical word as well as its placement and purpose in the statutory

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<sup>1</sup> While the section also speaks of the “best interest of adoptees,” that provision is directed to the “procedures and services” of children in need of adoption; in other words to procedural fairness in the adoption procedures. *See* MCL 710.21a. Read more broadly, that the “rights of the adoptee shall be paramount,” would effectively mean that people who were adopted would always prevail in any lawsuit, which is an absurd result.

scheme must be considered. *People v Washington*, 501 Mich 342, 352 (2018). “If the statute’s language is clear and unambiguous, then the statute must be enforced as written.” *Id.* In *People v Zajackzowski*, 493 Mich 6 (2012), the central question was the definition of a “blood” relationship in these same criminal sexual conduct statutes. This Court held that blood “is defined as ‘a relationship between persons arising from descent from a common ancestor’ or a relationship ‘by birth rather than by marriage.’” 493 Mich 6, 13 (2012). In *Zajackzowski*, this Court rejected efforts to extend that definition beyond its plain meaning based on the civil presumption of the legitimacy of children born within wedlock.

As this Court did in *Zajackzowski*, this Court should also reject the expansion of the term “blood” beyond its plain meaning based on MCL 710.60. The Legislature has made clear that it did not intend for MCL 710.60 to create a “blood relationship” for all purposes and for interpreting all statutes. The Legislature may be presumed to have intended that every word be given effect, and to know of existing legislation on the same subject. *People v Smith*, 423 Mich 427, 441 (1985). Reading MCL 710.60 to expand the term related by “blood” to mean “blood or adoption” is inconsistent with the way the Legislature has continued to differentiate between relations by blood and adoption in provisions both within the Adoption Code, and outside of it.

Within the Adoption Code, the Legislature has continued to be clear that a relation by adoption is distinct from a relation by blood. See MCL 710.22(u)(defines “relative” as someone related “within the fifth degree by marriage, blood, or adoption”); MCL 710.26(2)(“This subsection also applies to . . . the adoption of a child related to the petitioner within the fifth degree by marriage, blood or adoption.”); MCL 710.27(6) (subsection does not apply to the adoption of a child related within the fifth degree by



“marriage, blood, or adoption”) The Legislature has also continued to include both “blood” and “adoption” when defining or describing a relationship in numerous statutes, including statutes that were adopted very recently. MCL 205.27a(12) (defining related as siblings “by blood or by adoption”); MCL 208.1105(2) (defining related as siblings “by blood or by adoption”); MCL 208.1111(1)(x) (defining related to include siblings whether by “blood or by adoption”); MCL 333.21311a(8)(b) (defining “related” as including certain relationships by “marriage, blood, or adoption”); MCL 400.112g(6)(c) (defining “caretaker relative” as “any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the recipient”); MCL 400.707(2) (defining the term related to certain relationships “by marriage, blood, or adoption”); MCL 554.524 (Uniform Transfers To Minors Act defines “member of the minor’s family” as certain relations whether by “blood or by adoption”); MCL 554.1012(a)(i)(B) (Uniform Commercial Real Estate Receivership Act defines “affiliate” to include lineal ancestor or descendant “whether by blood or adoption” and certain relatives, again by “blood or adoption”); MCL 700.2806 (definition of relative of ex-spouse for purpose of estate law); MCL 700.5204(2)(c)(iii) (one of the conditions for appointment of guardian for child is that the person being appointed is “related to the minor within the fifth degree by marriage, blood, or adoption”); MCL 722.26c(1)(b)(iii) (third party may seek custody if, among other things, they are “related to the child within the fifth degree by marriage, blood, or adoption”); MCL 722.111 (definitions in Children Code for “family child care home” and “group child care home” excepts children related to adult member of household by “blood, marriage or adoption” in versions adopted within the last year); MCL 722.124 (power to place child includes people “related to a child by blood, marriage, or adoption”); MCL 722.124c (section does not apply to adoption of a child

related to the petitioner “within the fifth degree by blood, marriage, or adoption”); MCL 722.925(g)(complaints permitted to be made by adults “related to the child within the fifth degree by marriage, blood, or adoption”).

This Court has said that policy decisions are best left to the Legislature. The Legislature intentionally chose the words “blood or affinity” knowing what the common meaning of the terms are. Reading MCL 710.60 to create a blood relationship between people once an adoption is final would render the term “adoption” superfluous in all of these statutes. While the prosecution asserts that the purpose of the Penal Code was to protect children, this is not a stated purpose of the Code and the definition would apply not just to young people but also to consenting adults. *See* MCL 750.520e(1)(d).

As the Legislature has demonstrated that it continues to differentiate between blood and adoption, and to specify adoption when they want to include that relationship, this Court should not presume that in the case of the Penal Code the Legislature intended something else entirely. Rather, it should assume that the Legislature intended to use the common meaning of “blood” to not include adopted children.

**Conclusion**

Defendant-Appellant asks this Honorable Court to grant plea withdrawal or any other appropriate relief.

Respectfully submitted,

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/s/ Christine Pagac

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