State of Michigan

In the Supreme Court

People of the State of Michigan,
Plaintiff-Appellee,

Supreme Court No. 156720

v

Court of Appeals No. 332500

Raymond Charles Pierson,
Defendant-Appellant.

Circuit Court No. 10-1241 FH

Brian L. Mackie (P25745)
Washtenaw County Prosecutor
Attorney for Plaintiff-Appellee
PO Box 8645
Ann Arbor, MI 48107
(734) 222-6620

Timothy A. Doman (P77811)
Scott A. Grabel (P53310)
Attorneys for Defendant-Appellant
PO Box 2723
Dearborn, MI 48123
(734) 642-7916

Plaintiff-Appellee's Supplemental Brief on Application for Leave to Appeal
Oral Argument Requested

Brian L. Mackie (P25745)
Washtenaw County Prosecutor

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

Introduction

The Court has directed oral argument on whether to grant Defendant's application or take other action, and ordered supplemental briefing addressed to two questions:

(1) whether Defendant was denied the right to a fair trial when the trial court informed the jury that that his confession to police had already been reviewed by the court and had been held admissible; and

(2) to the extent that the trial court erred, whether that error was harmless.[1]

Answering the actual questions asked by this Court, Plaintiff-Appellee, the People of the State of Michigan, asserts that Defendant's right to a fair trial was not undermined when the trial court stated in the presence of the jury that Defendant's statements—plural; inculpatory and exculpatory—were admissible. The jury in this case is entitled to the credit Judge Boonstra afforded it, and more.

And, as the Court of Appeals unanimously—if implicitly—held, any finding of error was harmless in light of the independent evidence of Defendant's guilt.

As for Defendant's belated attempt to place an issue of judicial partiality before the Court, it is both ill-taken and meritless.

This Court should deny Defendant's application, or otherwise dispose of this case consistent with the analyses in this supplemental brief.

[1] *People v Pierson*, ___ Mich ___; 913 NW2d 661 (2018); citations omitted.

Table of Contents

Index of Authorities

Counterstatement of Jurisdiction

This Court has jurisdiction in this case, and has directed argument on the application. MCRs 7.303(B)(1), 7.305(H)(1).

Counterstatement of Questions Involved

I. Defendant gave statements to three separate deputies. The trial court stated that all three of those statements were admissible. Did the Court of Appeals lead opinion properly hold that Defendant received a fair trial, and did the partial dissent properly hold that the trial court did not err?

Plaintiff-Appellee answers, "Yes."
Defendant-Appellant answers, "No."
The trial court answered, "Yes."
The Court of Appeals answered, "Yes."

II. Defendant broke into a residence with an AK-47 "like Rambo," and then tried to avoid apprehension. Police discovered loaded and empty AK-47 magazines in Defendant's car. Was any error on the trial court's behalf harmless?

Plaintiff-Appellee answers, "Yes."
Defendant-Appellant answers, "No."
The trial court was not presented with this question.
The Court of Appeals answered, "Yes."

Counterstatement of Facts

Back in the summer of 2010, Defendant put his AK-47, along with some extra magazines contained in a duffel bag, into his mother's car and drove to Corey Taylor's apartment to commit a Home Invasion. Both Taylor and Cassandra Jackson where present when Defendant appeared and came through the door-wall "like Rambo," i.e. with the AK-47.[2] Unlike Rambo, Defendant did not prevail in the end. Instead, he and Corey Taylor ended up back outside of the apartment in a physical struggle for the gun.

That's when Deputy Urban happened by. As Urban issued commands to defuse the combat, Corey Taylor complied and Defendant did not; Urban ultimately had to tase Defendant to keep him from escaping.[3] Then, as Defendant was being led to a police car, he volunteered that he "broke into his house but the guy had the gun."[4]

Once Defendant was secured at the scene, deputies investigated. Deputy Buffa read Defendant his *Miranda* rights and Defendant told him he was dropped off at the scene and planned on committing the home invasion. Defendant continued that as he was poked his head inside, the resident came at him with a gun.[5] Deputy Buffa left Defendant alone in his car for a bit while he investigated with his colleagues. He observed a black bag with AK-47 magazines on the passenger seat of the nearby vehicle. The vehicle was registered to Defendant's address.[6] Armed with that knowledge, Buffa spoke with Defendant again. This time, Defendant told Buffa

[2] Appendix, p 88a.
[3] Appendix, pp 100a-101a.
[4] Appendix, p 102a.
[5] Appendix, p 123a.
[6] Appendix, p 124a.

that he expected Corey Taylor to have a lot of money in his residence, so he arrived there with his gun to steal the money. When Buffa asked why he needed a gun, Defendant answered, "You see how shit can get bad."[7]

As the home invasion investigation wound down, other investigators were interested in the possible narcotics activity at Corey Taylor's residence. Twelve hours later, Detective Toth interviewed Defendant to that end. Toth repeated the *Miranda* warnings and Defendant gave a final statement.[8] In his final statement, Defendant said that Corey Taylor called him for a ride to a store because his—Taylor's—car had a broken headlight.[9] Defendant said he drove to the scene and a shirtless Corey Taylor came out with a black bag, which he placed on the passenger seat. When Taylor went back in to put a shirt on, Defendant looked through the bag and saw the AK-47. Defendant said he was upset about the gun in his car, so he took the gun out of the bag and went to the residence to confront Taylor about it.[10] Later on, Toth discovered that Corey Taylor's headlights were both functional.[11]

Urban, Buffa, and Toth all testified at trial. During cross-examination of Urban, Defendant pointed out that Urban did not read him his *Miranda* rights.[12] Then on re-direct, the prosecution began to establish that *Miranda* rights are not a prerequisite where there is no interrogation. After Defendant objected, the trial court stated "[y]ou know what, I'm going to cut that part of it off here. The Court

---

[7] Appendix, 124a.
[8] Appendix, 133a.
[9] Appendix, 134a.
[10] Appendix, 134a.
[11] Appendix, 135a.
[12] Appendix, 114a.

already held a hearing on this matter and I have ruled that the defendant was properly advised of his rights and that the statements that have been introduced are admissible."[13] The prosecution moved to a different line of inquiry.

Moments later, Defendant repeated to Urban that the trial court ruled that his statements were admissible; statements to Urban, Buffa, and Toth—"three statements, okay."[14]

At the close of evidence and arguments, and after the trial court instructed the jury with no objection by either party, the jury convicted Defendant as charged.[15]

[13] Appendix, 119a.
[14] Appendix, 119a.
[15] Appendix, 154a-155a.

Argument

Eight years ago, Defendant broke into an apartment with an AK-47. Six years ago he was convicted. Four years ago, his conviction became final on direct appeal.[16]

Three years ago, Defendant moved for relief from judgment. The circuit court (the original trial judge retired in the interim) denied Defendant's motion, finding—relevant to the matter as now presented—that he could not clear the good-cause requirement of MCR 6.508.[17]

Two years ago the Court of Appeals partially granted Defendant's delayed application for leave to appeal, and last year that Court affirmed the circuit court's ruling.[18] In doing so, that court bypassed any discussion of the procedural requirements of 6.508 and delved into the substantive issue.[19]

Given the nature of the lead opinion and the opinion concurring in part and dissenting in part, and most importantly given the nature of this Court's Order, the People offer the following analyses and ask that this Court deny Defendant's application.

[16] Appendix, 12a-14a.
[17] Appendix, 15a, 30a.
[18] *People v Pierson*, 321 Mich App 288; 909 NW2d 274 (2017).
[19] *People v Reed*, 198 Mich App 639, 645; 499 NW2d 441 (1993).

I. Defendant gave statements to three separate deputies. The trial court stated that all three of those statements were admissible. The Court of Appeals lead opinion properly held that Defendant was not deprived of a fair trial. The partial dissent properly held that the trial court did not err.

Standard of Review

This Court reviews the Court of Appeals opinion to determine whether it was clearly erroneous and will cause material injustice. This Court also considers whether the Court of Appeals decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.[20]

Discussion

In the context of a defendant's statement(s) to police, there is a difference between "admissible" and "voluntary." There is also a difference between "inculpatory" and "exculpatory." This second distinction is especially germane to an effort to collapse the first distinction.

As Defendant was quick, and correct, to point out near the spotlighted point of his trial, he made statements to three deputies.[21] The trial court had, shortly before, communicated that the statements, plural, were admissible.[22] The three statements contained varying degrees of inculpation and exculpation: the first can be distilled to "I broke in but did not bring the gun," the second to "I broke in and brought a gun in case something went wrong," and the third to "I did not break in and I did not have a gun." The number and disparity of Defendant's statements necessarily renders the applicability of precedent a bit orthogonal, both as it relates to the

[20] MCR 7.305(B)(5).
[21] Appendix, 119a. (See p 29 ln 21 through p 30 ln 2.)
[22] Appendix, 119a. (See p 28 ln 9-14.)

propriety of the trial court's statement and as it relates more generally to the fairness of the trial. The number and disparity of Defendant's statements also renders this case to outlier status, thus not an attractive vehicle for any sort of rule promulgation.

So while the Court of Appeals dissent's analysis and conclusion were correct, they were even more correct than it acknowledged. More importantly, the extant data points this Court has highlighted in its Order are not threatened by our facts. The chronologically first of those data points is the Court of Appeals' decision in *People v Gilbert*.[23] In *Gilbert*, the trial court told the jurors directly about its role in determining the voluntariness of a confession, including the several factors it considered. That court then instructed the jurors that

> …in this case I have made such a determination, that that could come before you, was voluntarily made, so far as any conduct of the police officers were (sic) concerned. Is it for you the jury to consider and determine the weight and credibility of that confession….[24]

The *Gilbert* court held that the trial court's instruction to that jury was error because the trial court itself discounted the credibility of that defendant's impeaching evidence, "especially that properly admitted evidence that relate[d] to voluntariness."[25]

But the *Gilbert* court's animating rationale is not engaged when a jury is presented with three disparate confessions. Defendant's three statements were all, unquestionably, admissible. And they were unavoidably cross-impeaching. However

[23] *People v Gilbert*, 55 Mich App 168; 222 NW2d 305 (1974).
[24] *Gilbert*, 55 Mich App at 172.
[25] *Gilbert*, 55 Mich App at 173.

the jury ultimately considered the three statements, its navigation of their disparate contours was surely not pressured by the trial court telling it that they were all three admissible.

In other words, even if jurists might conclude that the difference between "voluntary" and "admissible" is insignificant in the context of the animating concern that "voluntary" may be taken by a jury as "factually accurate," the difference between "voluntary" and "admissible" is quite plain in multi-statement contexts that compel a jury to determine for itself which—if any—of three confessions was factually accurate. Here, then, Defendant's argument to the jury regarding which of the three statements to credit was in no way undercut by the trial court pointing out that all three were admissible.

Ten years after *Gilbert* came *People v Kincaid*.[26] The young defendant in that case offered to the jury that police coerced his statement. That trial court immediately instructed the jury that it had found the officers' actions not to have been improper or illegal. The Court of Appeals found those comments to present the same kind of prejudicial effect as telling a jury that a statement was voluntary.[27] (That court went on to find that because the improper instruction was prompted by Defendant's proffer, and because that trial court otherwise properly instructed the jury, and because of substantial independent evidence of the defendant's guilt, the error was not reversible.[28])

[26] *People v Kincaid*, 136 Mich App 209; 356 NW2d 4 (1984).
[27] *Kincaid*, 136 Mich App at 215-216.
[28] *Kincaid*, 136 Mich App at 216.

As above, however, any prejudicial effect attending a trial court's admissibility commentary evaporates in our context of three varying confessions. And, to draw another contrast between our facts and those of *Kincaid* and *Gilbert*, the People submit that the trial court's statement was less prejudicial, and certainly no more prejudicial, than the judges' instructions in those two cases. In both of those two cases, the judges directed their admonitions at the juries.[29] In our case, any fair reading reveals that the trial court was engaging the attorneys, not the jury. And it's just as fair to characterize the trial court's curtness as directed to the prosecution's *Miranda*-related inquiry as to defense counsel's objection; the Court of Appeals lead opinion found exactly that.[30] And, after the admonition, the prosecution shifted its examination to different subject matter. When the trial court subsequently cut off defense counsel, he was still able to continue with his intended line of questioning.[31] Where reasonable minds can perhaps differ regarding which attorney took the brunt of the trial court's curtness, the record unequivocally reveals that the prosecution's questioning was deflected and defense counsel's was not. And the record unequivocally reveals that the trial court's commentary was comparatively benign when compared to the direct instructions given to the *Kincaid* and *Gilbert* juries.

This Court's Order also cites *People v Corbett* and *People v Mathis*, but within the inquiry whether any error in the trial was harmless. Below, the People will

[29] *Gilbert*, 55 Mich App at 172. *Kincaid*, 136 Mich App at 215.
[30] *Pierson*, 321 Mich App at 293.
[31] Appendix, 119a.

outline how the evidence independent from Defendant's statements and the trial court's commentary thereupon renders any impropriety harmless.

But here, the People will analyze *Corbett* and *Mathis*—as has already been done with *Kincaid* and *Gilbert*—within a framework that establishes that Defendant was not denied the right to a fair trial.

The trial court in *Corbett* pointed out directly to the jury that it had already ruled that *Miranda* had been complied with and that the defendant's single statement was voluntary.[32] The *Corbett* court concluded that the jury there had to accept that the defendant's statement was admissible, but that the balance of the trial court's instructions was proper. And, since it was undisputed that that defendant made the statement, that trial court's improper information was not reversible error.[33]

Here, the jury assuredly accepted that all three of Defendant's statements were admissible, and whatever the contours of its deliberations, they were not meaningfully affected by the trial court's gratuitous proffer of that tautology.

The facts and outcome of *Mathis* were different from *Corbett*, but the animating rationale was not. That trial court informed the jury that the defendant had voluntarily made a statement to police.[34] Even though that trial court also told the jury it had to determine whether the statement was made and, if made, true, the Court of Appeals pointed out the disconnect between telling a jury that a statement was voluntary and then asking it to determine whether the statement had been

[32] *People v Corbett*, 97 Mich App 438, 441; 296 NW2d 64 (1980).
[33] *Corbett*, 97 Mich App at 443.
[34] *People v Mathis*, 75 Mich App 320, 324; 255 NW2d 214 (1977).

made in the first place. As the court asserted, any jury would be perplexed at the prospect of effectively overruling something a trial court told it.[35]

No such perplexity existed in our case. While the jury was tasked with determining which, or which parts, of Defendant's three statements were made and true, its task was not improperly eclipsed by a trial court telling it how to do so or which statement it had already favored. And even if the jury found itself perplexed by the trial court stating that Defendant was properly advised of his rights, that condition could not have shaded it toward the prosecution. Remember that there were three statements. The first was not preceded by any *Miranda* recitation and was partially inculpatory. The second was preceded by *Miranda* and was more thoroughly inculpatory. The third was preceded by *Miranda* and was entirely exculpatory. Any appreciation by the jury of a statement's propriety stemming from the proper advice of rights could not have inured to the first, inculpatory, statement. Even the prosecution appreciated that outcome, choosing to move to a different line of questioning after its admonition by the trial court.

Another Court of Appeals case recasts the problem with telling a jury that a defendant's statement was voluntary, but that formulation is also inapplicable where there are multiple disparate statements. There was one confession in *People v Mosley*, and that trial court told that jury that it "was given freely and voluntarily."[36] The Court of Appeals found that such an instruction "stamp[ed] upon the confession the endorsement of the court and substantially deprive[d] the

[35] *Mathis*, 75 Mich App at 324.
[36] *People v Mosley*, 72 Mich App 289, 293; 249 NW2d 393 (1976).

defendant of the right to a jury determination of whether the statement had been made, and if so, the weight to be afforded it."[37]

Even if we speculate that Defendant's jury assigned weight to his second, more thoroughly inculpatory, statement, that assignment cannot have been due to the trial court's endorsement. That is because the trial court did not endorse one statement to the exclusion of another; instead, it said that the statements—plural—were admissible.

Instead, any reasonable jury would have assigned less weight to Defendant's third statement simply because of the other facts of the case. Defendant's third statement needed Corey Taylor's headlight to be broken; it was not.[38] Defendant's third statement needed to explain why there were AK-47 magazines in his mom's car,[39] but that explanation bordered on laughable: Defendant would have the jury believe he was upset about a guy putting an AK-47 in his (mom's) car, but did not care that the guy also put loaded and unloaded magazines in his car.

Defendant had a fair trial because the facts presented to the jury meshed with his guilt and with his second statement. Defendant had a fair trial because when the trial court said the statements were admissible, it did not add "especially the second one."

A final comment is appropriate in light of the relevant precedent. The Court of Appeals dissent drew the distinction between the terms "admissible" and "voluntary," and also pointed out that the trial court otherwise properly instructed

[37] *Mosley*, 72 Mich App at 294.
[38] Appendix, 135a.
[39] Appendix, 103a.

the jury both before and after the trial regarding its ultimate fact-finding role.[40] The People agree with the dissent's analysis, even though it would have been even stronger had it engaged with the fact that the jury heard Defendant's multiple statements, including one fully exculpatory one.

But another thing that would have made the dissent's analysis stronger would have been if the trial court had instructed the jury with M Crim JI 4.1. That instruction goes beyond generally informing a jury that it is the ultimate finder of fact, and what is and is not evidence, and instructs specifically that the jury is ultimately responsible for determining whether a defendant actually made a statement, and if so, what weight it deserves.

M Crim JI 4.1 has played a role in the analyses of some of the precedent already discussed. In *Kincaid*, the Court of Appeals factored in that the trial court "properly instructed the jury regarding the defendant's statement at the close of the trial" on its way to concluding that the error was not reversible.[41] So too in *Corbett* did the trial court instruct with M Crim JI 4.1, another "not reversible error" outcome.[42] The trial court instructed the jury on this point in *Mathis*, but there it was not enough to prevent the Court of Appeals from reversing.[43] A similar outcome of reversible error even with part of that instruction was obtained in *Mosley*.[44]

Had the trial court below instructed the jury with M Crim JI 4.1, the Court of Appeals dissent's analysis would have been even more unassailable. But its absence

[40] *Pierson*, 321 Mich App at 297-298, 302.
[41] *Kincaid*, 136 Mich App at 216.
[42] *Corbett*, 97 Mich App at 441-443.
[43] *Mathis*, 75 Mich App at 324.
[44] *Mosley*, 72 Mich App at 293-294.

cannot inure to Defendant's benefit. After the trial court instructed the jury, counsel asked that it also instruct the jury regarding the number of witnesses and the propriety of a lawyer speaking with a witness.[45] But counsel was otherwise satisfied with the jury instructions. Whatever hindsight stems from the absence of M Crim JI 4.1 does not accrue to Defendant's benefit.[46]

Defendant, sort of, agrees. On page 32 of his supplemental brief, he too points out M Crim JI 4.1's omission. But he does not point out that he did not object to that omission at trial. This two-layer omission is relevant to the impropriety, discussed below, of Defendant's attempt to morph this case into a judicial-partiality-structural-error case.

The proper analysis here is whether Defendant's trial was fair in light of the trial court's statement. It was fair in light of the existence and presentation of all of Defendant's statements for the jury's review.

[45] Appendix, 154a.
[46] *People v Carter*, 462 Mich 206, 219; 612 NW2d 144 (2000).

II. Defendant broke into a residence with an AK-47 "like Rambo," and then tried to avoid apprehension. Police discovered loaded and empty AK-47 magazines in Defendant's car. Any error on the trial court's behalf was harmless.

Standard of Review

This Court reviews the Court of Appeals opinion to determine whether it was clearly erroneous and will cause material injustice. This Court also considers whether the Court of Appeals decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.[47]

Discussion

When one closes one's eyes and thinks about the word "Rambo," various images come to mind. A menacing look, a chiseled physique, a headband around long sweaty hair, a large and threatening knife. But the first image that comes to mind is Sylvester Stallone gripping an AK-47.

The victim, Cassandra Jackson, did not have her eyes closed when Defendant "came through the blinds like Rambo."[48] She did not have to imagine an AK-47; an AK-47 is precisely what she saw in Defendant's hands.[49] For this reason alone, any error on behalf of the trial court was harmless.

Of course there was even more. Police saw Defendant in a struggle with another man for the AK-47. The other man complied with police directives; Defendant tried to escape. The magazines that fit the AK-47 were found on Defendant's front passenger seat.

---

[47] MCR 7.305(B)(5).
[48] Appendix, 88a.
[49] Appendix, 102a.

Those were the things that the prosecution was able to present independent of Defendant's statements. Excising Defendant's statements, and the various pieces of evidence that corroborated his inculpatory statements and undermined his exculpatory one, the prosecution still established quite convincingly that Defendant was guilty of all of the charged crimes.

Defendant effectively concedes this point by choosing to ignore it. Instead, and contrary to the explicit instruction in this Court's Order, Defendant has combed the record to come up with a laundry list of what he calls judicial error or partiality. Some of those things were objected to at trial; some were not. Some of those things factored into Defendant's unsuccessful direct appeal; some did not. None of those things factored into his unsuccessful motion for relief from judgment. All of those things, all of them, are outside the scope of this Court's Order.

Undeterred, Defendant proffers this Court's recent decision in *People v Stevens* and endeavors to avail himself of its holding.[50] His call-back to that case, however, is utterly devoid of any explanation of the facts of that case. *Stevens* addressed the death of a three-month-old child from alleged purposeful head trauma; predictably, both parties called expert witnesses. And that trial court repeatedly engaged (over vigorous objection) the defendant's expert.[51] That trial court personally challenged the defense expert with comments like "that's just your opinion, correct?," "[h]ave you ever travelled so far to testify?," "you're (only) as assistant pathologist, correct…?," "do you think a head pathologist is more qualified to testify by way of

[50] *People v Stevens*, 498 Mich 162; 869 NW2d 233 (2015).
[51] *Stevens*, 498 Mich at 181.

experience or do you think an assistant pathologist is more qualified to testify by way of experience?," and "why didn't you (review all of the investigative reports) in this case then?"[52] And that's not all; that judge also engaged the defendant himself: "[W]hat happened to the truck that you allegedly tripped and lost your balance on?"[53] Ultimately, this Court promulgated a fact-specific, multi-part test addressed to judicial partiality, and found that the judge's conduct in that case compelled reversal.[54]

Not only is that test inapplicable to our current case, Defendant has also mischaracterized the factual record in his effort to make it apply. Regarding inapplicability, this Court's Order did not ask a third question of whether 45 years of precedent analyzing the harmful effect of judicial instructional error should now be jettisoned in favor of an "instructional error as structural error" model. To the extent that Defendant is asking this Court to at least partially reverse all of the cases cited in its Order, the People demur. Regardless, none of Defendant's inapplicable criticisms approach the level of the *Stevens* trial court's personal and improper participation in the creation of actual evidence partial toward that prosecution.

Regarding the factual record, in our case the trial court said "…the statements that have been introduced are admissible." On pages 23 and 24 of his supplemental brief, Defendant truncates that fact and asserts that the court said that a statement, singular, was admissible. Now, if a defendant gave multiple statements

[52] *Stevens*, 498 Mich at 181-184.
[53] *Stevens*, 498 Mich at 185.
[54] *Stevens*, 498 Mich at 171-191.

that were all inculpatory, the statement/statements distinction might collapse. But as has already been explained, where the statements were both inculpatory and exculpatory, commenting on their admissibility does not move the needle toward one party or the other, i.e. such comment reflects no partiality.

Defendant's journey outside of this Court's Order hits its nadir, however, on page 34. Not only does he elude this Court's Order, he travels outside of the record in this case and indeed outside of any record at all. Whatever counsel's experiences are vis-à-vis judicial partiality, they are conveniently one-sided. Counsel is welcome to spend time at undersigned's water cooler for discussions about trial judges undermining prosecutors' cases; cases that, when they end in acquittals, are never even seen by appellate courts, and when they end in convictions do not contain allegations of partiality in the defendants' questions presented. But ultimately, no "jokes" or discussions about "certain judges" (even retired ones) are germane to the matter at hand.

In the matter at hand, this Court may choose to expound upon the trial court's statement in the jury's presence. That statement was assuredly improvident. But the People agree with the Court of Appeals dissent; even if the trial court should not have said "admissible," it did not say "voluntary." It otherwise properly instructed the jury just as Defendant agreed at trial.

This Court may decline to expound upon the trial court's statement, seeing as how on the facts of this case, with all three of Defendant's statements being

admissible, the trial court's statement was nothing more than a tautology that could not possibly have pushed the jury toward a finding of guilt.

Depending on the Court's choice, it may then move on to consider whether any error was harmless. As sure as "Rambo" means "AK-47," it was. As sure as loaded AK-47 magazines match an AK-47, it was. As sure as both headlights were functional, it was.

What this Court should not do is venture beyond its own Order.

Relief Requested

Plaintiff-Appellee, the People of the State of Michigan, respectfully request that this Court deny Defendant-Appellant's Application for Leave to Appeal, or grant other relief consistent with the analyses above.

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
(734) 222-6620

October 5, 2018