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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND CHARLES PIERSON,

Defendant-Appellant.

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Supreme Court No. 156720

Court of Appeals No. 332500

Circuit Court No. 10-001241 FH

# DEFENDANT-APPELLANT'S REPLY BRIEF

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## INTRODUCTION

Arguing that any error in this case was harmless, the prosecution says, "As sure as 'Rambo' means 'AK-47,' it was." (Pros Supp Br, p 18). The problem? Rambo never used an AK-47. FIRST BLOOD (Orion Pictures, 1982).[1] So too goes the central thesis of the prosecution's brief—that what the trial court judge really meant by his comments was that all three sets of Pierson's alleged statements, both inculpatory and exculpatory, were admissible. This interpretation is simply untenable given the context of the judge's comments. Equally untenable is the prosecution's refusal to recognize that this Court's decision in *People v Stevens*, 498 Mich 162; 869 NW2d 233 (2015), should guide the analysis in this case. The prosecution's attempts to recast the facts and issues in this case should not persuade this Court.

[1] To the extent that the prosecution is relying on any of the sequels rather than the original, such reliance is misplaced. FIRST BLOOD is clearly the seminal Rambo film and the best in the series. It's also not a bad movie in its own right, and it was certainly worth the rewatch the defense gave it.

## ARGUMENT

### I. The prosecution incorrectly characterizes the trial court's comments.

The key premise of the prosecution's brief is that what the trial court judge really meant was that all three sets of Pierson's alleged statements—to Urban, to Buffa, and to Toth—were admissible. The prosecution's position is entirely dependent on this interpretation. Unfortunately for the prosecution, it's simply wrong. First, it's doubtful that this is what the trial court judge actually meant. Far more importantly, it's doubtful that this is how any juror would have interpreted the trial court's comments.

It's first necessary to place the comments within their context. They came during Urban's testimony. He was the first police witness to testify and only the second witness overall, after Cassandra Jackson. He testified, of course, only about the statements that Pierson had allegedly made to him: "I broke into his house but the guy had the gun." (102a). On cross-examination, trial counsel challenged Urban on the existence of the statements:

> Q. Now, you also said Mr. Pierson made a statement to you, correct?
>
> A. That's correct.
>
> Q. We don't have a writing of that either, do we?
>
> A. No, he was handcuffed when he made that statement to me.
>
> Q. I see. We don't have a recording?
>
> A. No, we don't. [114a.]

Counsel also challenged Urban on whether he had read Pierson the *Miranda* warnings:

> Q. Okay. Now, when you took—said that Mr. Pierson gave you his statement, was there any Miranda warnings?
>
> A. I didn't question him.
>
> Q. He just blurted out?
>
> A. He did? [114a.]

On re-direct examination, when the prosecutor was apparently trying to establish that Urban need not have given Pierson the *Miranda* warnings, the trial court said the comments at issue. Take a close look: "The Court 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." (119a).

The plain language of the trial court's comments betrays the prosecution's reading. The judge was referring to "the statements that have been introduced." At that point, only one set of statements had been introduced—"I broke into his house but the guy had the gun." Therefore, the judge did not mean "all three sets of statements are admissible." And the jury certainly couldn't have interpreted it that way.[2]

A word should be said about the judge's use of "statements" rather than "statement." The prosecution contends that the use of the plural "statements" must mean that the judge was referring to all the various declarations Pierson allegedly gave to the multiple police officers. Not so. Pierson did in fact make two distinct statements according to Urban: (1) "I broke into the house" and (2) "but the guy had the gun." A statement can be "a single declaration or remark." *Merriam-Webster's Collegiate Dictionary* (11th ed). What's more, as a point of usage, it's not unusual to see "statement"

[2] Further, if the comments had been intended so innocuously, it's doubtful they would have drawn a defense objection.

and "statements" used interchangeably. Here, for example, one speaker could say "Pierson's statement to Urban," another speaker could say, "Pierson's statements to Urban," and neither would likely feel compelled to correct the other. Moreover, again, the judge referred to "statements" that had been "admitted." Only Pierson's alleged statements to Urban had been admitted at that point. This definitively resolves any ambiguity.

And even if the comments were somehow ambiguous, the tenor of the interaction between the judge and defense counsel was not. First, the judge's comments drew a defense objection. (119a). This signaled to the jury that counsel believed that the judge was giving away damaging information. And rather than correcting his error, the judge doubled down: "Fine. Go ahead. It's true. Have a seat." (119a). The judge thus cemented the damaging comments while also painting trial counsel as an obstructionist, an impediment to the jury hearing "the truth." The exchange between trial counsel and the judge clearly indicated to the jury that the judge was hostile to the defense.[3]

The prosecution also argues that the trial court's comments were "comparatively benign" because they deflected the prosecutor's questioning. (Pros Supp Br,

[3] The prosecution also calls attention to trial counsel's subsequent inquiry of Urban in which trial counsel said that Pierson "gave three statements." (119a; Pros Supp Br, pp 3, 5). It's not clear what trial counsel was trying to accomplish at this point. This remark came on the heels of another instance in which the judge scolded trial counsel. After counsel asked Urban if he "appreciated" the judge's ruling and began to ask "So my client gave a statement to you—" the judge said, "You know what, that doesn't matter either. So go ahead." (119a). It is clear, though, that the defense disputed whether the statements to Urban and Buffa ever occurred. (145a-146a).

p 8). The defense couldn't disagree more. Again, the comments were made in response to a defense objection. (119a). And it seems obvious that the prosecutor moved into a different line of inquiry only because the judge had saved him the trouble of going through the *Miranda*-related inquiry. Moreover, the objection and response are critical. They undoubtedly telegraphed to the jury that the judge viewed the defense antagonistically.

The prosecution also completely ignores the judge's remark that he had "already held a hearing on this matter and . . . ruled that the defendant was properly advised of his rights . . . ." (119a). As stated in the defense's supplemental brief, (Def Supp Br, p 24), given the context, the jury would have inferred that in the judge's estimation, the police had acted properly. The judge thus imparted his personal stamp of approval on the credibility of the police. See *People v Mosley*, 72 Mich App 289, 293-294; 249 NW2d 393 (1976). This naturally undercut the defense argument that Urban and Buffa did not in fact act properly in this case. (145a-146a).

**II. The prosecution cannot sidestep the application of *Stevens* in this case.**

The prosecution is at obvious pains to avoid the application of *Stevens* in this case. Its efforts, though, are unavailing.

The prosecution argues that the defense focuses on judicial partiality "contrary to the explicit instruction in this Court's Order." (Pros Supp Br, p 15). The defense finds this argument eminently curious. This Court directed the parties to address, first and foremost, whether Pierson was denied his right to a fair trial. *People v*

*Pierson*, 502 Mich 909; 913 NW2d 661 (2018). *Stevens* provides the formula for answering this question. Again, the danger inherent in the judge's comments was that the jury would take them as his personal endorsement of the credibility of the police over Pierson. *People v Gilbert*, 55 Mich App 168, 173; 222 NW2d 305 (1974); *Mosley*, 72 Mich App at 293-294. And when a judge conveys—or appears to convey—his opinion about a case to the jury, it implicates the defendant's right to a fair trial by an impartial judge. *Stevens*, 498 Mich at 174-175. The test for analyzing such claims is stated in *Stevens*. *Id*. at 170-171. Therefore, *Stevens* is the case this Court must look to. In short, the applicability of *Stevens* in this case cannot be legitimately disputed.

The prosecution also chides the defense for not explaining the facts of *Stevens*, suggesting that *Stevens* is limited to those facts. (Pros Supp Br, pp 15-16). Again, the defense finds this criticism curious. This Court in *Stevens* quite deliberately established a comprehensive standard for addressing claims of judicial partiality. *Stevens*, 498 Mich at 170 ("In order to provide clarity going forward, we thus propose a new articulation of the appropriate test, grounded in a criminal defendant's right to a fair and impartial jury trial."). The idea that *Stevens* is somehow limited to its facts is patently wrong.

The prosecution undoubtedly wants to avoid the application of *Stevens* because it requires the Court to look at the complete scope of the trial court judge's conduct in this case. That's understandable. It's not a pretty picture for the prosecution. The comments at issue were just one in a series of instances in which the judge demeaned

defense counsel in front of the jury, revealing his hostility toward the defense. Applying *Stevens*, reversal is required in this case.

## RELIEF REQUESTED

As stated in the defense's preceding brief (Def Supp Br, pp 34-35), the law in this area has become muddled. So muddled, in fact, that the defense and the prosecution cannot even agree on what caselaw this Court should look to in this case. Clarification from this Court is therefore necessary.

Further, the prosecution's suggestion that *Stevens* is limited to its facts is worrisome. That's clearly not what this Court intended with *Stevens*. The prosecution's contention should not be left uncorrected, and this Court should use this case as an opportunity to expand its judicial-impartiality jurisprudence.

The judge's prejudicial comments in this case pierced the veil of judicial impartiality. The judge then twisted the knife with his intemperate response to the defense objection. Considered in combination with the judge's other displays of antagonism toward the defense, Pierson was deprived of his right to a fair trial. Because such an error can never be deemed harmless, this Court must reverse.

Respectfully submitted,

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