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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

PLAINTIFF-APPELLANT,

v

DAWN MARIE DIXON-BEY,

DEFENDANT-APPELLEE.

SUPREME COURT NO. 156746

COURT OF APPEALS NO. 331499

CIRCUIT COURT NO. 15-4596-FC

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REPLY TO ANSWER TO APPLICATION FOR LEAVE TO APPEAL

JERROLD SCHROTENBOER (P33223)
CHIEF APPELLATE ATTORNEY

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STATEMENT OF THE QUESTION PRESENTED

Where the trial court concluded that defendant "brutally murdered in cold blood," is 35-70 years for second-degree murder disproportionately high?

The Court of Appeals answered:	**Yes**
Plaintiff-Appellant answers:	**No**

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STATEMENT OF FACTS

Plaintiff relies on the Statement of Facts from its November 9, 2017, application.

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ARGUMENT

Because, as the trial court concluded, defendant "brutally murdered in cold blood," 35-70 years for second-degree murder is not disproportionately high.

Plaintiff stands by its application pointing out that (1) the Court of Appeals' majority decision does not adequately consider the effect of *People v Ewing (After Remand)*, 435 Mich 443, 446, 462; 458 NW2d 880 (1990), on proportionality analysis and (2) that the majority's approach comes too close to making the guidelines mandatory again. In fact, one finds it difficult to differentiate the majority's analysis from when the guidelines were mandatory and substantial and compelling reasons were needed to deviate. Both are tied in strongly to the guidelines.

As it is, a recent development shows just how much this Court needs to look at the issue and enunciate clear guidelines to the lower courts. Just last week, despite not citing the present case, *People v Steanhouse (On Remand)*, Mich App ; NW2d , 318329, 12/5/17, lv pending 156900, used the same analysis and found the sentence disproportionate by looking at the guidelines and deciding whether the reasons given for deviating had been adequately considered. The approach from both cases directly contradicts what this Court said in *People v Steanhouse*, 500 Mich 453; 902 NW2d 327, 337 (2017):

> The [United States Supreme] Court [in *Gall v United States*, 552 US 38, 47; 128 S Ct 586; 169 L Ed 2d 445 (2007)] reasoned that these approaches would "come too close to creating an impermissible presumption of unreasonableness for sentences outside the Guidelines range." The Michigan principle of proportionality, however, does not create such an impermissible presumption. Rather than impermissible measuring proportionality by reference to deviations from the guidelines, our principle of proportionality requires "sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." [Citation omitted.] . . . [Such dicta that guidelines should almost always control] are inconsistent with the United

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> States Supreme Court's prohibitions on presumptions of unreasonableness for out-of-guidelines sentences . . . and we disavow those dicta. We repeat our directive from [*People v Lockridge*, 498 Mich 358, 391; 870 NW2d 502 (2015),] that the guidelines "remain a highly relevant consideration in the trial court's exercise of sentencing discretion" that the trial courts "'must consult'" and "'take . . . into account when sentencing'" and our holding from [*People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990),] that "the key test is whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines' recommended range."

No one has explained how the majority's analysis (or the analysis in *Steanhouse (On Remand)* for that matter) in any way adheres to this holding that proportionality requires looking at what the defendant did and not to whether the guidelines already adequately consider the reasons given.

And the sentence is proportionate in the present case. Simply put, 35 to 70 is not disproportionately high for a first-degree murder (what the sentencing court factually found, as allowed by *Ewing (After Remand)*). The sentencing court did not abuse its discretion.

As it is, just two years after finding the mandatory federal sentencing guidelines to be unconstitutional, the United States Supreme Court considered this particular issue to be so important that it issued two opinions dealing with it (*Gall* being one). This Court should address this issue too.

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RELIEF

ACCORDINGLY, once again, plaintiff asks this Court to grant leave to appeal, reverse, and reinstate the sentence.

Respectfully submitted,

December 13, 2017

/s/ Jerrold Schrotenboer
JERROLD SCHROTENBOER (P33223)
CHIEF APPELLATE ATTORNEY

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PROOF OF SERVICE

BROOKE SLUSHER states that on December 13, 2017 she personally served a copy of:

REPLY TO ANSWER TO APPLICATION FOR LEAVE TO APPEAL

upon:

GARY DAVID STRAUSS (P48673)
Attorney for Defendant-Appellant

By First Class Mail with postage prepaid and/or by True Filing.

/s/Brooke Slusher

Brooke Slusher
Legal Secretary