**STATE OF MICHIGAN**

**IN THE SUPREME COURT**

**PEOPLE OF THE STATE OF MICHIGAN**

Plaintiff-Appellant

-vs-

**JENNIFER MARIE HAMMERLUND**

Defendant-Appellee.
_____/

**Supreme Court No. 156901**

**Court of Appeals No.** 333827

**Lower Court No.** 15-09717 FH

**KENT COUNTY PROSECUTOR**
Attorney for Plaintiff-Appellee
_____

**STATE APPELLATE DEFENDER OFFICE**
Attorney for Defendant-Appellant
_____

# DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF

**STATE APPELLATE DEFENDER OFFICE**

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## STATEMENT OF JURISDICTION

Defendant-Appellant adapts the Judgment Appealed from and Relief Sought statements from her Application for Leave to Appeal.

## STATEMENT OF QUESTION PRESENTED

I. WERE MS. HAMMERLUND'S FOURTH AMENDMENT RIGHTS VIOLATED WHEN POLICE OFFICERS COERCED HER TO EXTEND HER HAND OUTSIDE OF HER DOOR TO CONDUCT A WARRANTLESS ARREST?

Court of Appeals answers, "No".

Defendant-Appellant answers, "Yes".

# STATEMENT OF FACTS

## Introduction

At 4:00 a.m., two police officers from the Kentwood Police Department arrived at Jennifer Hammerlund's home after her vehicle had been in an accident and abandoned on the side of the road. (51a-52a; 72a-76a). When they arrived, the officers demanded that Ms. Hammerlund come to the door. (109a). Ms. Hammerlund, who was in bed when the officers arrived, initially declined to go to the door. (109a). However, after the officers told Ms. Hammerlund's roommates they were going to arrest her and threatened them with being charged with harboring a fugitive if she did not appear, Ms. Hammerlund acquiesced to the officers' orders and came to the area near her front door. (109a).

Shortly thereafter, Officer Eric Staman, who discovered Ms. Hammerlund's vehicle on the side of the road, arrived at the residence and spoke with the officers who confirmed her identity. (51a; 72a-77a) Officer Staman then went to Ms. Hammerlund's front door and demanded to see her identification. (52a-53a; 78a-79a). Ms. Hammerlund, who was "very hesitant" to go to the door because she believed the officers were going to arrest her, remained 15-20 feet from the door and gave her identification to one of her roommates to pass to Officer Staman. (52a-53a; 78a-80a; 109a).

After reviewing her identification, Officer Staman "made sure" only Ms. Hammerlund retrieved the ID and would not return it through one of her roommates. (53a). In response to these commands, Ms. Hammerlund approached

the door to obtain the identification from Officer Staman and extended her hand past the threshold. (53a, 55a-56a) Despite the fact that he did not have an arrest warrant, Officer Staman grabbed Ms. Hammerlund's wrist and attempted to drag her out of her home. After his first attempt to pull her from the home failed, Officer Staman stepped into Ms. Hammerlund's home and arrested her for failure to report accident to fixtures, a 90-day misdemeanor. MCL 257.621. (53a, 55a-59a; 81a-82a)

Once outside, Ms. Hammerlund was subjected to a breathalyzer test and questioning by Officer Staman. (82a-86a, 88a). The breathalyzer results and her post-arrest statements formed the basis of the Operating While Intoxicated (3rd Offense) charge that she was ultimately convicted of at trial. (82a-86a, 88a).

Both at trial and on appeal, Ms. Hammerlund argued her Fourth Amendment rights were violated when she was arrested from her home without a warrant in violation of *Payton v New York*, 445 US 573, 585–90 (1980). Following Ms. Hammerlund's application for leave to appeal, this Court ordered supplemental briefing on the issue of "whether it is constitutionally permissible for a police officer to compel, coerce, or otherwise entice a person located in his or her home to enter a public place to perform a warrantless arrest."

**Trial Testimony**

On September 30, 2015, at approximately 3:00 a.m., Ms. Hammerlund was involved in a car accident on southbound US-131 near the 54th Street off-ramp in Wyoming, Michigan. (68a-69a, 102a-105a). The accident occurred after she was cut off by a truck and, while swerving to avoid contact with it, crashed her car into a

concrete barrier. During the crash, she hit her face on the steering wheel and got a bloody nose (105a). The accident made her vehicle undrivable. (105a). As a result, Ms. Hammerlund, who was on her way home from her job as a bartender, had her roommate call an Uber to get home. (106a). Ms. Hammerlund did not report the accident to the police.

Once home, Ms. Hammerlund cleaned herself up and grabbed a beer out of the refrigerator. (107a). She was very "shaken up" about the accident and was "crying a lot." (107a). To deal with the stress, she grabbed a bottle of "Rumple Minz" from the freezer and "did a bunch of shots." (107a). She estimated that she had a three to four glasses of liquor with approximately three ounces in each glass. (107a-108a). It was her trial defense that she was not intoxicated at the time of the accident and only became drunk by drinking at home afterwards.

At about 3:48 a.m., Wyoming Police Officer Erich Staman was on road patrol when he responded to a dispatch regarding an abandoned vehicle on southbound US-131 near the 54th Street off-ramp. (49a-50a; 68a-69a, 75a). The vehicle, a Chevrolet Malibu, was found facing the wrong direction against the concrete barrier. (49a-50a; 70a). According to Officer Staman, there was damage to both sides of the vehicle from hitting the guardrail and concrete barrier on the off-ramp. (50a; 70a).

Before having it towed away, Officer Staman conducted an inventory search of the vehicle. (50a; 71a-72a). This search revealed paperwork with Ms.

Hammerlund's name on it. (50a; 71a-72a). Ms. Hammerlund was also the registered owner of the vehicle. (50a; 71a-72a).

Officer Staman then contacted the Kentwood Police Department to have officers dispatched to Ms. Hammerlund's home and drove to the address to meet them there. (50a-51a; 72a-76a). When the officers arrived at the home, they demanded Ms. Hammerlund come to the door and told her roommates they were going to arrest her. The officers also threatened Ms. Hammerlund's roommates that they would be charged with harboring a fugitive if they Ms. Hammerlund did not come to the door.[1] (109a). In response to these commands, Ms. Hammerlund, who was in her bed when the officers arrived at her home, came to the area near the door, but stayed 15-20 feet from the door because she was afraid the officers were going to arrest her. (109a)

Once he arrived at the address, Officer Staman was informed by the Kentwood officers that they had made contact with Ms. Hammerlund and that she had admitted to them she was driving. (50a-52a; 77a-78a). Officer Staman began his own conversation with Ms. Hammerlund. (51a). He was outside on her porch, and she remained inside, standing about 15-20 feet from the door. (51a). She was still reluctant to move closer. (51a). When he asked for her driver's license, she

[1] It is unclear how many officers from the Kentwood Police Department were present at the time Ms. Hammerlund was arrested. However, it appears that at least two officers were present because they were consistently referred to as "officers."

instead gave it to one of her roommates to hand to him.[2] (53a). He confirmed her identification, and she acknowledged having been in an accident. (52a). She also told him she got a bloody nose during the accident. (53a). During this interaction, Officer Staman thought Ms. Hammerlund believed he was "trying to coax her out of the house." (80a).

Having received Ms. Hammerlund's license from an intermediary, Officer Staman now "made sure" that he returned it to Ms. Hammerlund directly. As he described it, "she came to the door where I was standing and reached out to get the I.D. as I gave it to her, at which point I grabbed her by the arm and attempted to take her into custody." (53a). He could not recall whether he or Ms. Hammerlund opened the door. (55a). He did recall, however, that he was standing outside the residence when he grabbed her arm and, after she attempted to pull away from him, took "two or three steps inside the doorway." (55a). Officer Staman did not "think [his] hand was ever inside the house when [he] handed her the I.D." (58a). Ms. Hammerlund was still inside when she reached out to grab her license. (57a-58a). Officer Staman "made sure" she retrieved her identification from him so he could arrest her. (53a). He did not tell her she would be arrested before grabbing her. (57a).[3]

[2] There were two other people, a man and a woman, inside the house. At trial, Ms. Hammerlund identified them as her roommate and his girlfriend. (108a). Officer Staman testified he thought she used a third person to hand over her identification because "she thought I might be trying to coax her out of the house." (80a).

[3] At trial, Officer Staman described the arrest as follows (81a-82a):

Officer Staman arrested Ms. Hammerlund for her failure to report an accident to fixtures. (53a). Though this was a 90-day misdemeanor (and so not an arrestable offense), Officer Staman claimed he mistakenly believed it was a 93-day misdemeanor (for which arrest was proper). (53a). Officer Staman also thought Ms. Hammerlund might be intoxicated. Inside her residence, she seemed to be leaning against the wall for balance, and her speech seemed "slightly slurred for whatever reason." (80a).

Once in the car with Officer Staman, Ms. Hammerlund waived her *Miranda* rights and gave a statement. In the statement, she explained:

- the accident was caused by an unknown third party driver who cut her off and caused her to lose control of the car and crash. (82a-83a).
- She drank two beers and a shot that night. (83a).
- She denied drinking alcohol after the crash. (85a).

Officer Staman could also smell "intoxicants" on her during the interview. (84a). He did not see any empty or open containers in Ms. Hammerlund's car or home. (96a). After interrogating her, Officer Staman took her to the jail for booking and

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> At this point I was done with her I.D. I had wrote down the information that I needed from it, verifying that it was her. I went to give it back to her. I was standing outside of the residence when I gave it back to her, and she had walked into the doorway and reached out to grab [t]he I.D. from me, at which point I took her into custody for the hit and run charge. During that we had a slight struggle between each other. She had pulled away, stepping back into her house, so I stepped inside the house and ended up taking her into custody without much difficulty. She was handcuffed and then brought out to my car.

performed two breath tests on her. Those tests revealed a blood alcohol content levels of .22 and .21. (88a).

**Motion to Suppress**

Ms. Hammerlund filed a motion filed a motion to suppress evidence obtained from Officer Staman's warrantless entry into her home and her arrest. (28a-35a). Ms. Hammerlund's attorney argued that suppression was required because Officer Staman only had probable cause to arrest Ms. Hammerlund for Failure to Report Accident to Fixtures, MCL 257.621, a 90-day misdemeanor that, pursuant to MCL 764.15, is not subject to arrest if the offense is not committed in the officer's presence and the officer does not have an arrest warrant. In addition, trial counsel also argued that the evidence resulting from Ms. Hammerlund's arrest should be suppressed because Officer Staman violated her Fourth Amendment rights when he unlawfully entered Ms. Hammerlund's home by grabbing her arm and arresting her when she tried to retrieve her identification back from him. (60a-63a).

In response, the prosecution, relying on *United States v Santana*, 427 US 38, 43 (1976), argued that her motion should be denied because Officer Staman was not inside the home when he grabbed Ms. Hammerlund's arm and only entered the home after she attempted to pull away from him.

**Circuit Court Opinion and Order Denying Motion to Suppress**

On March 18, 2016, Judge Sullivan, relying on *Santana*, entered an opinion and order denying Ms. Hammerlund's motion to suppress. (17a-19a). The Court concluded:

> In this case, the testimony at the evidentiary hearing reveals that defendant was in the middle of a consensual discussion with Officer Staman, voluntarily approached him, and voluntarily reached out of her door. Officer Staman was legitimately in that area and it did not violate the constitution for him to effectuate an arrest by grabbing her arm when she reached out of her doorway. That he then stepped inside defendant's home as a result of her attempts to pull away does not change the result. *The officer was clearly in pursuit for the arrest at that point, and defendant could not suddenly render the arrest unconstitutional by escaping that pursuit to a private place.*

(19a)(emphasis added).

**Appellate Proceedings**

On appeal, Ms. Hammerlund argued she was entitled to a new trial because Officer Staman violated her Fourth Amendment rights when he arrested her at her home without a warrant. The Court of Appeals, relying on *United States v Santana*, 427 US 38, 43 (1976), disagreed and affirmed her convictions. (24a-26a).

On May 30, 2018, upon review of Ms. Hammerlund's application for leave to appeal, this Court scheduled this case for oral argument on whether to grant the application or take other action. In addition, this Court ordered the parties to brief the issue of "whether it is constitutionally permissible for a police officer to compel, coerce, or otherwise entice a person located in his or her home to enter a public place to perform a warrantless arrest."

## I. MS. HAMMERLUND'S FOURTH AMENDMENT RIGHTS WERE VIOLATED WHEN POLICE OFFICERS COERCED HER TO EXTEND HER HAND OUTSIDE OF HER DOOR TO CONDUCT A WARRANTLESS ARREST

### *Introduction*

This Court ordered supplemental briefing on the issue of "whether it is constitutionally permissible for a police officer to compel, coerce, or otherwise entice a person located in his or her home to enter a public place to perform a warrantless arrest." This question was previously addressed by this Court in *People v Gillam*, 479 Mich 253, 266 (2007), but left unresolved as the Court concluded that, even it we were to recognize the constructive entry doctrine, Mr. Gillam failed to establish that police constructively entered his home. Here, however, Ms. Hammerlund's warrantless arrest was a direct product of the coercive and compulsive tactics employed by the officers who came to her home at 4:00 a.m. Indeed, the officers went to Ms. Hammerlund's home with the purpose of luring her to the front door so they could arrest her without doing what the law requires – obtaining an arrest warrant before arresting an individual in their home. *Payton v New York*, 445 US 573, 585–90 (1980).

Ms. Hammerlund asks this Court adopt the constructive entry doctrine and to hold that her constitutional rights were violated when Officer Staman coerced her into exposing her hand to the public and dragged her out of her home without a warrant. In particular, Ms. Hammerlund asks this Court to adopt the constructive entry doctrine because (1) it will deter police officers from undermining *Payton* and Fourth Amendment protections of privacy within the home by making it unlawful

for officers to use coercion, enticement or other compulsive means to make an individual expose themselves to the public and purposefully evade warrant requirement; and (2) ensures judges fulfill their constitutional role of determining whether the evidence is sufficient to constitute probable cause before the police are permitted to invade the an individual's privacy within the home.

### *Issue Preservation*

Ms. Hammerlund preserved this issue by filing a pre-trial motion to suppress. (28a-35a).

### *Standard of Review*

This Court reviews legal conclusions de novo and a trial court's findings of fact at a suppression hearing for clear error. *People v Williams*, 472 Mich 308, 313 (2005). Constitutional questions are reviewed de novo. *Michigan Chiropractic Council v Comm'r of the Office of Financial & Ins. Services*, 475 Mich 363, 369 (2006). Preserved constitutional error requires this Court to reverse unless the prosecution can prove beyond a reasonable doubt that the error did not contribute to the verdict. *People v Carines*, 460 Mich 750, 774 (1999).

### *Argument*

It is well-established that, even with probable cause, an officer "may not constitutionally enter a home without a warrant to effectuate an arrest, absent consent or exigent circumstances." *Payton*, 445 US at 585–90 (1980); *People v Oliver,* 417 Mich 366, 377 (1983). As the Supreme Court noted, "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is

directed." *United States v United States Dist Court*, 407 US 297, 313 (1972); see also *Florida v Jardines*, 569 US 1, 6 (2013) ("[W]hen it comes to the Fourth Amendment, the home is first among equals."). The Court has made clear that a Fourth Amendment draws a firm line at the entrance of the home:

> The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home—a zone that finds its roots in clear and specific constitutional terms: "The right of the people to be secure in their ... houses ... shall not be violated." That language unequivocally establishes the proposition that "[at] the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." [*Silverman v. United States*, 365 US 505, 511 (1961).] In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.

*Payton*, 445 US at 589–590; see also *Oliver*, 417 Mich at 377. Therefore, "[b]efore agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries." *Welsh v Wisconsin*, 466 US 740, 750 (1984); see also *Collins v Virgina*, ___ US ___; 138 SCt 1663 (2018) (declining to extend automobile exception to vehicle parked within curtilage of the home.).

### A. This Court should adopt the constructive entry doctrine.

Since the Supreme Court decided *Payton*, courts have been divided over how to address the situation where officers come to an individual's home without a warrant and employ coercive, compulsive, or enticing tactics to cause that

individual to be exposed to the public for the purpose of effectuating a warrantless arrest. Indeed, even prior to *Payton*, the Supreme Court expressed concerns over a situation where an officer arrives at a home without a warrant and demands to enter the home "under color of office." *Johnson v United States*, 333 US 10, 13 (1948). Under those circumstances, the Court concluded that entry "was granted in submission to lawful authority rather than as an understanding and intentional waiver of a constitutional right." *Id.* at 13. Despite the fact that the Court expressed these concerns over 60 years ago, in *Johnson*, the Court has yet to directly address this issue.

To address the problems arising from warrantless doorway arrests, a number of courts have adopted constructive entry doctrine. Justice Kelly, in her dissenting opinion in *Gillam*, succinctly described this doctrine:

> The constructive entry doctrine is a valid legal doctrine that protects individual liberties and safeguards individuals' Fourth Amendment rights. It respects the United States Supreme Court's decision in *Payton*, which drew a "firm line at the entrance to the house." *Payton*, 445 U.S. at 590, 100 SCt. 1371. Equally important, the constructive entry doctrine recognizes that officers cannot do through coercive tactics and the abuse of authority what they cannot do physically: they cannot enter someone's home to effectuate an arrest without a warrant. As noted by the Sixth Circuit Court of Appeals, "[a] contrary rule would undermine the constitutional precepts emphasized in *Payton*." *United States v Morgan*, 743 F2d 1158, 1166–67 (CA 6, 1984).

*Gillam*, 479 Mich at 273–274 (Kelly, J., dissenting).[4]

[4] The constructive entry doctrine has also been addressed in detail in law review articles. See e.g., Dow, "Step Outside, Please": Warrantless Doorway Arrests and the Problem of Constructive Entry, 45 New Eng.L.Rev. 7 (2010). In addition, in his treatise on the Fourth Amendment, Professor LaFave argues that a warrantless doorway arrest is illegal if the defendant's presence at the door or outside the dwelling was "brought about by coercive tactics." 3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 6.1(e) (5th ed. 2012)

In the federal courts, the constructive entry doctrine has been adopted by the Sixth, Ninth, and Tenth Circuits. See *Fisher v City of San Jose*, 475 F3d 1049, 1065-66 (CA 9, 2007); *United States v. Saari*, 272 F3d 804, 808 (CA 6, 2001); *United States v. Maez*, 872 F2d 1444, 1451 (CA 10, 1989). In addition, other courts, while not using the term constructive entry, have applied the same analysis to address warrantless doorway arrests. See, e.g., *Sharrar v Felsing*, 128 F.3d 810, 820 (CA 3, 1997); A few state courts have also adopted constructive entry in some form. See, e.g., *State v Maland*, 103 P.3d 430, 434-35 (Idaho 2004); *Scroggins v State*, 276 Ark 177, 182-183 (1982); *State v Dahl*, 323 Or 199 (1996).

In cases applying the constructive entry doctrine, the primary inquiry for the court is whether a reasonable person would feel compelled to leave the house or enter a public place. See *Sharrar*, 128 F3d at 819; *Gillam*, 479 Mich at 273–274 (Kelly, J., dissenting). When determining this issue, courts look at the police conduct to determine whether the individual was under arrest within the home by applying the standard provided in *United States v Mendenhall*, 446 US 544, 554 (1980):[5]

> We conclude that a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

[5] See *Saari*, 272 F3d at 808.

Further, the important consideration in this type of case "is the location of the arrested person, and not the arresting agent, that determines whether an arrest occurs within a home." *United States v Morgan*, 743 F2d 1158, 1166 (CA 6, 1984)

The constructive entry doctrine has been applied to a wide range of police conduct. This conduct includes officers surrounding the home, sometimes with drawn weapons, floodlights, or armored vehicles, see e.g., *Morgan*, 743 F2d at 1161, or some other "clear show of physical force and assertion of authority." *Sharrar*, 128 F3d at 819-820. The application of the doctrine, however, has not been limited to situations where weapons are drawn or other extreme forms of police conduct. Instead, courts have applied constructive entry more broadly to cover circumstances where an officer an officer uses coercive statements to cause an individual to enter a public place.

For example, in *United States v. Quaempts*, 411 F3d 1046 (CA 9, 2005), at least four officers went to the defendant's trailer. After one of them knocked on the door and said, "Darrell Quaempts, police officer. I need to talk to you," the defendant opened the door. *Id*. at 1047-1048. The court found the actions to be a constructive entry. *Id*. at 1048-1049.

Similarly, the Sixth Circuit, in *Boykin v Van Buren Twp*, 479 F3d 444, 450, n2 (CA 6, 2007), concluded that there was "an unequivocal show of force by the police" where the officer stated "I'm trying to avoid coming into your home and dragging you out of your home.... And we're going to do that if you don't listen to us." For the *Boykin* court, this conduct "effected a constructive entry into Boykin's

home, in direct violation of the *Payton* 'proscription against warrantless arrests.'" *Id.*, citing *Saari*, 272 F3d at 807.

Other federal circuits, however, have adopted a narrow reading of *Payton* and limit Fourth Amendment violations to circumstances where police officers actually enter the home. See *Knight v Jacobson*, 300 F3d 1272, 1277 (CA 11, 2002); *United States v Berkowitz*, 927 F2d 1376, 1386 (CA 7, 1991); *United States v Carrion*, 809 F2d 1120, 1128 (CA 5, 1987). These courts apply this approach regardless of coerciveness of the police conduct involved. See e.g., *Carrion*, 809 F2d at 1128 (holding that *Payton* was not violated when the police, without crossing the threshold, pointed guns at and arrested the defendant when he was still in a hotel room). This mechanical application of *Payton* should be rejected.

Limiting *Payton* to actual entry into the home undermines the privacy rights of individuals in their homes and encourages police officers to engage in coercive and intimidating conduct designed to compel individuals to expose themselves to public reach and to warrantless arrest. See *Morgan*, 743 F2d at 1166–67 (concluding a rule contrary to constructive entry "would undermine the constitutional precepts emphasized in *Payton*."). It also undermines the well-established rule that a neutral and detached judge – not a police officer – determine whether probable cause exists to invade the privacy of the home. The United States Supreme Court, in *Johnson*, explained the "grave concern" of officers thrusting themselves into a home without a warrant:

> Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the

> officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers. Crime, even in the privacy of one's own quarters, is, of course, of grave concern to society, and the law allows such crime to be reached on proper showing. The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent.

*Johnson*, 333 US at 13–14. Adopting a rule that would permit officers to act with impunity to cause an individual to expose themselves to the public and to warrantless arrest through coercion or compulsion would, therefore, undermine the core protections the Fourth Amendment is designed to provide. Restricting the application of *Payton* to common-law trespass is simply insufficient to protect privacy interests in the home. See *Silverman*, 365 US at 511 ("[i]nherent Fourth Amendment rights are not inevitably measurable in terms of ancient niceties of tort or real property law.").

### B. The police constructively entered Ms. Hammerlund's home.

The police constructively entered Ms. Hammerlund's home and violated her Fourth Amendment rights when they arrived at her home at 4:00 a.m and coerced her into extending her hand past her doorway for the purpose of arresting her for a 90-day misdemeanor. The coercive and compulsive tactics employed by the officers made it so Ms. Hammerlund, or any other reasonable person in her position, would feel compelled to leave the house or enter a public place. Indeed, Ms. Hammerlund

appeared at the door "*only because of* the coercive police behavior taking place outside of the house." *Morgan*, 743 F2d at 1166.

From the moment the officers arrived at Ms. Hammerlund's residence, they made clear that she had no choice but to obey their commands or else she would face arrest. Indeed, when she initially failed to obey their command to appear at the doorway, the officers even threatened Ms. Hammerlund's roommates with arrest if she did not follow their demand to appear at the door. This conduct constituted an unequivocal show of force and made clear that Ms. Hammerlund had no choice but to comply with the officers' commands. *Boykin*, 479 F3d at 450, n2 (CA 6, 2007) (concluding that there was "an unequivocal show of force by the police" where the officer stated "I'm trying to avoid coming into your home and dragging you out of your home.... And we're going to do that if you don't listen to us.").

Officer Staman only enhanced the coercive nature of the police conduct. Despite the fact that the Kentwood officers had already confirmed Ms. Hammerlund's identity, Officer Staman demanded to see her identification. Ms Hammerlund, who was standing 15-20 feet from the door and afraid that he was trying to coax her to the doorway for purpose of arresting her, handed her identification to her roommate to give to Officer Staman. After questioning her, Officer Staman "made sure" he returned the identification to Ms. Hammerlund and would not return the identification to a roommate. At this point, after being previously threatened with arrest if she failed to obey the officers' orders, she certainly did not feel free to ignore Officer Staman summoning her to the door.

*United States v Villa-Gonzalez*, 623 F3d 526 (CA 8, 2010) (officer did not return defendant's identification card, without which "a reasonable person is much less likely to believe he can simply terminate a police encounter").

Further, during the entire interaction, Ms. Hammerlund consistently manifested her desire to remain within the home and to avoid contact with the police. Ms. Hammerlund initially declined to come to the door when the Kentwood officers demanded her presence – a decision she was absolutely entitled to make. See *Payton*, 445 US at 589–590. It was only after the officers threatened her and her roommates with arrest that she obeyed the officers' orders. Even then, Ms. Hammerlund remained 15-20 feet from the door because she correctly determined that the officers were trying to "coax" into going to the doorway so they could arrest her. Finally, when Officer Staman attempted to drag Ms. Hammerlund out of her home, she only extended her hand outside of the threshold to obtain her identification and the rest of her body was inside the home. Officer Staman then had to enter the home to put Ms. Hammerlund in handcuffs.

The coercive nature of the officers' conduct was only amplified by the time of their arrival. "As a general matter, . . . a visitor [may not] come to the front door in the middle of the night without an express invitation." *Jardines*, 569 U.S. at 20 (Alito, J., dissenting); see also *People v Frederick*, 500 Mich 228, 895 NW2d 541, 547 (2017)(concluding the implied scope of the license for police officers to conduct knock and talks "does not extend to these predawn approaches."). Here, the officers arrived at Ms. Hammerlund's home at 4:00 a.m. to investigate a 90-day

misdemeanor, which is not arrestable offense under Michigan law,[6] and, where there was no exigency to be addressed. *Welsh*, 466 U.S. at 754 (holding "a warrantless home arrest cannot be upheld simply because evidence of the petitioner's blood-alcohol level might have dissipated while the police obtained a warrant.").

In reviewing the totality of the circumstances, the coercive police conduct employed outside of Ms. Hammerlund's home would make a reasonable person would feel compelled to leave the house or enter a public place. To find otherwise would allow police officers to act with impunity and reduce the Fourth Amendment's protections in the home "to a nullity." *Johnson*, 333 US at 13–14. Ms. Hammerlund therefore asks this Court to adopt the constructive entry doctrine and require officers to do the law requires when they seek to arrest an individual in their home – get a warrant. *Payton*, 445 US at 589–590.

### C. No exigency justified the constructive entry and warrantless arrest.

The courts below erred in ruling that Ms. Hammerlund left her home and thus exposed herself to a warrantless arrest when she reached through her doorway only long enough to retrieve her identification from a police officer who refused to allow her roommate to retrieve it for her. Both courts relied on the Supreme Court's decision in *United States v Santana*, 427 US 38 (1976), to conclude Ms. Hammerlund was in a public place when she reached through the door and Officer Staman was in "pursuit" of her when he arrested her. (17a-19a; 24a-26a). *Santana*,

[6] See MCL 764.15 (authorizing arrest for misdemeanor punishable by fewer than 93 days imprisonment only if committed in officer's presence).

however, is distinguishable and does not support either conclusion. This is so because "the *Santana* case does not cover those instances in which the police were not in 'hot pursuit' to start with but the defendant answered the police knock at his door and then retreated back into the premises upon seeing the police." 3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 6.1(e) (5th ed. 2012).

In *Santana,* police officers saw Santana standing in the open doorway to her home shortly after a heroin transaction they had probable cause to believe she participated in. *Id.* at 40, 42. As they were approaching the defendant's home, officers noticed that she was standing in the doorway. They "pulled up within 15 feet" of her, got out of the vehicle, shouted "police," and displayed their identification. *Id.* at 40. She immediately fled inside her home. The police followed through the open door and arrested her. *Id.* She later moved to suppress evidence found during and after her arrest, arguing that the officers had illegally entered her home. *Id.* at 41. The Supreme Court disagreed and held that she "was in a 'public' place" when the police arrived. *Id.* at 42. By standing in her doorway, "[s]he was not in an area where she had any expectation of privacy.... She was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house." *Id.* The Court went on to hold, "a suspect may not defeat an arrest which has been set in motion in a public place ... by ... escaping to a private place." *Id.* at 43. The entry was therefore justified by exigent circumstances: the "hot pursuit" of a fleeing felon. *Id.*

### 1. Ms. Hammerlund was not in a public place when the officers arrived at her home.

Here, Ms. Hammerlund was not standing in her open doorway before encountering Officer Staman; instead, she only came to her door to retrieve her driver's license from him. In addition, according to Staman's own account, she was standing inside of her home about 15-20 feet from the door and was "very hesitant" to come closer to come talk to him because she thought he was trying to "coax" her out of the house to arrest her. (53a; 78a-79a). Indeed, Ms. Hammerlund initially refused to hand her identification over to Officer Staman for that very reason, and came to the door to retrieve her identification from the officer because he "made sure" she was the one that had to get it from him. (53a).

### 2. The "hot pursuit" exception does not apply.

The lower courts also erred when they concluded Officer Staman's unlawful entry into Ms. Hammerlund's home and warrantless arrest was justified because he was in "pursuit" of Ms. Hammerlund. The hot-pursuit doctrine does not excuse every instance where officers enter a home to arrest a suspect. "[H]ot pursuit means some sort of chase." *Santana,* 427 US at 42-43 (internal quotation marks omitted). The Supreme Court clarified this common-sense limitation to the hot- pursuit doctrine in *Welsh v Wisconsin,* 466 US 740 (1984), a case involving a warrantless home entry by officers to arrest a suspect for driving while intoxicated. *Id.* at 743.

The facts of *Welsh* help illustrate its holding. "[A]fter changing speeds and veering from side to side, the [suspect's] car eventually swerved off the road and came to a stop in an open field." *Id.* at 742. The suspect declined the assistance of a

passer-by and walked away from the scene. *Id.* at 742. The passer-by contacted the police. The officers soon arrived, interviewed the passer-by, and checked the registration of the now-abandoned car. *Id.* Realizing that the car's owner lived within walking distance, the officers went to the suspect's home, entered the house, and arrested the suspected driver. *Id.* at 742–43.

The Supreme Court unequivocally rejected the contention that the arresting officers were in hot pursuit of the suspect, where the officers arrived at the scene after the suspect had left and then proceeded to arrest him at his home. *Id.* at 753. That holding placed police officers on notice that the hot pursuit doctrine requires an "immediate or continuous pursuit of [a suspect] from the scene of a crime." *Id.*

Here, unlike *Santana*, who was in public view while engaging in a drug transaction, Ms. Hammerlund was behind a closed door within the privacy of her home when the police arrived. Indeed, she testified she was in her bed when the police first arrived at her home. As a result, it would have been obvious to a reasonable government actor in the officers' positions that, in the absence of an "immediate or continuous pursuit," *id.,* no hot pursuit existed to justify the warrantless arrest of Ms. Hammerlund inside her house. Simply put, there was no reason to believe that once she had returned to her house, she was likely to be a flight risk or danger to others, and thus there was ample time for the officers to obtain a proper warrant had they really deemed an arrest necessary under the circumstances. See *Morgan*, 743 F2d at 1164 ("Police officers may not, in their zeal

to arrest an individual, ignore the Fourth Amendment's warrant requirement merely because it is inconvenient.").

### D. Ms. Hammerlund's statement and breathalyzer test results must be suppressed because they are the fruit of the officers' unlawful entry into her home and her warrantless arrest.

The exclusionary rule prohibits use of evidence obtained, whether directly or indirectly, from an unconstitutional search or seizure as "fruit of the poisonous tree." *Wong Sun v United States*, 371 US 471, 487–488 (1963). Whether indirect evidence is suppressible "poisonous fruit" turns on "whether the evidence was discovered through 'exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" *Id*. at 488 (citation omitted); *see also People v Shabaz*, 424 Mich 42, 65 (1985); *People v Reese*, 281 Mich App 290, 295-96 (2008).

Here, Ms. Hammerlund's statement to Officer Staman immediately after her arrest and her breathalyzer test results are a direct product of Officer Staman's unconstitutional and unlawful conduct. If Officer Staman had not grabbed Ms. Hammerlund from the privacy of her home he would not have been able to interrogate her and administer the tests.

*New York v Harris* does not compel a different result. 495 US 14, 21 (1990). In *Harris*, the Court declined to exclude a statement made outside the home following a *Payton* violation where the police had probable cause to arrest and the suspect was in legal custody. But *Harris* is distinguishable because Ms. Hammerlund was not in legal custody.

In *Harris*, the defendant's Fourth Amendment rights were violated, under *Payton*, when police officers entered his home without a warrant on suspicion that he killed a woman. *Id*. at 16. Once inside, the officers gave him *Miranda* warnings, and he admitted to killing the woman. He was arrested and taken to the station. *Id*. at 16. After arriving at the station, Mr. Harris was once again informed of his *Miranda* rights, and he signed an inculpatory statement. He was then given *Miranda* warnings a third time and gave another, video-taped statement. "The sole issue in th[e] case [was] whether [Mr.] Harris' second statement—the written statement made at the station house—should have been suppressed because the police, by entering [Mr.] Harris' home without a warrant and without his consent, violated *Payton* …." *Id*.

In holding the second statement was not subject to the exclusionary rule, the Court limited the scope of the rule because, although Mr. Harris was arrested in violation of *Payton*, the police otherwise had probable cause to arrest him and he was in legal custody. *Harris,* 495 US at 20 ("[w]e do hold that the station house statement in this case was admissible because [Mr.] Harris was in legal custody ... and because the statement, while the product of an arrest and being in custody, was not the fruit of the fact that the arrest was made in the house rather than someplace else"). This is so because "the exclusionary rule is designed to deter police misconduct." *United States v Leon*, 468 US 897, 916 (1984). The purpose of the exclusionary rule, in *Harris*, was satisfied because the deterrent value of suppressing statements like Harris's would be minimal, since it is doubtful that the

desire to secure a statement from a suspect whom the police have probable cause to arrest would motivate them to violate *Payton*. *Harris*, 495 US at 20-21.

Ms. Hammerlund's case is distinguishable, however, because, unlike the defendant in *Harris*, she was *not* in legal custody when Officer Staman interrogated her in the back of the police car and later administered breath tests. This is so because in addition to violating her rights under *Payton*, the arrest also violated Michigan law: failure to report an accident to fixtures is a 90-day misdemeanor that, unless committed in the officer's presence, is not an arrestable offense. See MCL 764.15 (authorizing arrest for misdemeanor punishable by fewer than 93 days imprisonment only if committed in officer's presence).[7] The end result is that Officer Staman not only violated the Fourth Amendment, but also violated Michigan law when he arrested Ms. Hammerlund for a 90-day misdemeanor not committed in his presence. Unlike Mr. Harris, Ms. Hammerlund should not have been exposed to custodial interrogation questioning or other evidence-gathering techniques because she was never in legal custody. Here, unlike in *Harris*, there was misconduct to be deterred. *Leon*, 468 US at 916.

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[7] MCL 764.15(1), in relevant part, provides a peace officer, without a warrant, may arrest a person in any of the following situations:

> (a) A felony, misdemeanor, or ordinance violation is committed in the peace officer's presence.
> (b) The person has committed a felony although not in the peace officer's presence.
> (c) A felony in fact has been committed and the peace officer has reasonable cause to believe the person committed it.
> (d) The peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it.

**E. The error was not harmless.**

Finally, the constitutional error here was far from "harmless beyond a reasonable doubt." *Chapman v California*, 386 US 18, 24 (1967); see also *People v Carter*, 412 Mich 214, 217 (1981).

Had the trial suppressed Ms. Hammerlund's statement to Officer Staman the jury would not have heard evidence that she initially denied drinking after the accident. This evidence directly undermined the core of her defense at trial—that she only became intoxicated after she had several shots of alcohol upon returning home. (107a-109a). In addition, if the Court had suppressed her breathalyzer test results, the only evidence of her intoxication would have come from Officer Staman's observation that when he first talked to her she leaned against a wall as if unsteady and her speech seemed "a little slurred for whatever reason," and that when she came outside he could detect an odor of alcohol that was "[m]oderate at best." (79a-80a; 84a). This testimony only provided scant evidence of her alleged intoxication—particularly because Ms. Hammerlund had recently returned from work as a bartender, where she might have had alcohol spilled on her. The breathalyzer results provided the primary basis for the jury's conclusion she was drunk at the time of her accident. Without either of these crucial pieces of evidence, the jury was unlikely to have convicted her of drunk driving. The prosecution cannot meet its burden to show that the error in admitting the evidence was harmless beyond a reasonable doubt.

The remedy is to overturn the suppression ruling, reverse Ms. Hammerlund's conviction, and remand for further proceedings consistent with the Court's opinion.

## Summary and Request for Relief

Defendant-Appellant asks this Honorable Court to either grant this application for leave to appeal, or any appropriate peremptory relief.

Respectfully submitted,

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Date: September 10, 2018