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 REPLY BRIEF

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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 and her Supplemental Brief.

I. THIS COURT PROPERLY ORDERED ARGUMENT ON 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.

In its supplemental brief, the prosecution argues this Court improperly granted argument on "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" because it claims "[n]either appellant nor appellee had previously raised this issue" and "constitutes an entirely new claim, and is therefore outside this Court's appellate jurisdiction." The prosecution's argument is erroneous. This is so because this Court properly ordered argument on an issue that was properly raised and preserved in the lower courts. (28a-35a; 60a-63).[1]

The prosecution's argument is based on the assumption that *Payton* and constructive entry are different issues. This is incorrect. Courts that have adopted constructive entry have concluded *Payton* and constructive entry are one and the same. See e.g., *United States v Morgan*, 743 F2d 1158, 1166 (CA 6, 1984)("constructive entry" into a home in violation of *Payton* occurs whenever the police use "coercive [ ] conduct" to force a defendant outside of the home.). Indeed, even in cases where courts declined to adopt constructive entry, some have

[1] The prosecution's argument that this Court improperly granted argument on this issue is arguably waived because they failed to move for reconsideration within 21 days of this Court's MOAA order. See MCR 7.311(G).

recognized that *Payton* applies regardless of whether an officer actually enters the home. For example, in *United States v Allen*, 813 F3d 76, 88-89 (CA 2, 2016), the Second Circuit held

> where law enforcement officers summon a suspect to the door of his home and place him under arrest while he remains within his home, in the absence of exigent circumstances, *Payton* is violated regardless of whether the officers physically cross the threshold. That rule applies regardless of whether the police "constructively" or "coercively" entered the apartment through shows of force or authority beyond that conveyed by the simple command to the occupant to submit to arrest.

Id. at 88–89.[2] Therefore, because Ms. Hammerlund filed a pretrial motion to suppress and argued her Fourth Amendment rights were violated under *Payton*, the issue is preserved and properly before this Court. (28a-35a; 60a-63).

[2] See also Dow, *Muddling Through the Problem of Constructive Entry: Comments on United States v. Allen, 813 F 3d 76 (2d Cir. 2016), and Warrantless Doorway Arrests*, 79 U Pitt L Rev 243, 250-263 (2017)

Summary and Request for Relief

For the reasons stated in her Supplemental Brief and this Reply Brief, Ms. Hammerlund 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: October 24, 2018