

STATE OF MICHIGAN  
IN THE SUPREME COURT

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THE PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee,

v

THEODORE PAUL WAFER,

Defendant-Appellant.

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Supreme Court  
No. 153828

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Third Circuit Court No. 14-000152-FC  
Court of Appeals No. 324018

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ANSWER TO MOTION FOR RECONSIDERATION

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**Answer to Motion for Reconsideration**

The People of the State of Michigan, by Kym L. Worthy, the Prosecuting Attorney for the County of Wayne, Jason W. Williams, Chief of Research, Training, and Appeals, and Timothy A. Baughman, special assistant prosecuting attorney, request this Court deny defendant’s motion for reconsideration, and as reasons say:

1. Defendant requests reconsideration with regard to the convictions of both 2<sup>nd</sup>-degree murder and “statutory” manslaughter, that is, manslaughter under MCL 750.329, arguing that under *People v Davis*, 320 Mich App 484 (2017) and now *People v Williams*, \_\_\_ Mich App \_\_\_ (Docket #332834)(February 22, 2018), which follows *Davis*, conviction of offenses which are “mutually exclusive” of one another cannot both stand.

2. The “mutually exclusive” principle espoused in *Davis* has no basis in Michigan law. This Court has established the “Blockburger” test for multiple convictions at one proceeding; that is, both convictions are permissible if each contains an element the other does not. *People v. Smith*,

478 Mich. 292 (2007). The Court of Appeals has displaced this Court's precedent with its creation of the "mutually exclusive" doctrine. *Davis* involved one offense that required intent to do great bodily harm, and another which provided that the offense is committed without intent to do great bodily harm. Even the Court of Appeals admitted that this Court has held that there are no negative elements, see *People v. Doss*, 406 Mich. 90 (1979), and that thus "The prosecution was not required to prove this absence of intent, and the trial court was not required to instruct the jury in this regard," but followed with the *ipse dixit* that "This does not nullify the error of convicting defendant of mutually exclusive offenses."

3. *Davis* is wrong, is inconsistent with *Smith*, and an application for leave to appeal is pending in this Court. *This* Court is not bound by it, and should not grant any relief based on it.

**Relief**

**THEREFORE**, the People ask this Honorable Court to deny reconsideration.

Respectfully submitted,

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Prosecuting Attorney  
County of Wayne

JASON W. WILLIAMS  
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