

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellant

-vs-

CURTIS LEE HAMPTON

Defendant-Appellee.

Supreme Court No. 159676

Court of Appeals No. 338418

Lower Court No. 15-1559 FC

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DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF

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Judgment Appealed from and Relief Sought

Curtis Lee Hampton Jr. adopts the previously submitted Judgment Appealed from and Relief Sought.

Statement of Question Presented

- I. Did the Legislature intend to elevate to felony murder those instances of first-degree child abuse in which the only act of abuse is the child's murder?

Court of Appeals answers, "Yes."

Curtis Lee Hampton answers, "No."

Statement of Facts

Curtis Lee Hampton Jr. was charged and convicted of first-degree felony murder and first-degree child abuse based upon a single act – allegedly stabbing his 13-month old daughter, “CR.” Through using this single act as the murder and predicate felony, the prosecution was able to elevate what would otherwise have been second-degree murder to first-degree felony murder. The result is that Mr. Hampton was subject to a sentence of mandatory life without parole – the highest possible penalty allowed under Michigan law. (App 868a).

In addition to charges related to his daughter, Mr. Hampton faced charges related to the death of his girlfriend and mother of CR, Monique Rakowski. For her death, Mr. Hampton was charged with first-degree premeditated murder, felony murder, and criminal sexual conduct. In those counts, the prosecution alleged Mr. Hampton killed Monique under two separate theories: first, he killed her and it was premeditated; and second, that he killed her during the course of an attempted sexual assault. The jury acquitted him of those counts and convicted him of the lesser offense of second-degree murder. (App 868a).

Evidence in Support of the Convictions

Mr. Hampton met Monique in 2012, when both of them were living in a trailer park in Sterling Heights. (App 683a). From approximately 2012-2014, the two had an “on and off” relationship and both saw other people. (App 83a, 92a, 683a, 687a-688a). Monique and Mr. Hampton had a volatile relationship and were known as a couple with “problems.” (App 94a-95a, 137a). The volatile nature of their relationship led to

two incidents of domestic violence between them. (App 94a-95a, 689a-690a). One of these incidents led to a criminal conviction for Mr. Hampton and a no contact order. (App 689a-690a). Monique, however, went to court with him to have that order lifted. (App 690a-691a).

Monique was known to have a bad temper and issues with substance abuse. (App 95a, 100a-101a, 127a-128a, 431a, 700a). In order to address her mental health issues, Monique would self-medicate with marijuana, Adderall, and alcohol. (App 95a, 700a). According to Mr. Hampton, Monique regularly lost her temper and “would just blow up and say random things and go on and on about it.” (App 700a). Monique’s mother, Sharon Rakowski, also testified that she “drank a lot.” (App 95a).

As the sole eyewitness to the incident in question, Mr. Hampton took the stand at trial. He testified that the evening of February 11, 2015, he, Monique, and CR were at Monique’s house when the two began to discuss a letter Mr. Hampton received about child support and a bench warrant for his arrest. (App 720a). An argument ensued and Mr. Hampton got upset, so he went outside to smoke cigarettes and calm down. (App 724a).

After the argument, Monique, Mr. Hampton, and CR watched a movie together. (App 725a). During the movie, Monique was drinking alcohol, smoking marijuana, and became intoxicated. (App 726a-727a).

Later, Monique and CR went to the bedroom to lie down in the bed. (App 727a). Eventually, Mr. Hampton went to the bedroom to go to sleep. (App 729a). While in

the bedroom, Mr. Hampton asked if they could have sex one last time before he went to jail. (App 729a). Monique declined. (App 729a).

The two began arguing again about the warrant and the letter. At some point, Monique got angry, “snapped on” him, and started hitting him. (App 732a). She then pulled a knife from under her pillow and started swinging it at him, hitting him on the left side of his chest. (App 733a). Monique tried to stab him again, but her hair was in her eyes and she missed Mr. Hampton and stabbed CR in the chest. (App 734a).

Upon seeing his daughter get stabbed, Mr. Hampton “lost it.” (App 735a). He then chased Monique and tried to grab the knife out of her hands. (App 735a). While trying to get the knife from her they went from the bedroom, to the hallway, and eventually to the bathroom. (App 736a). Once he got the knife, Mr. Hampton “blacked out” and stabbed Monique between 14-16 times. (App 736a). Monique fell on the bathroom floor. Mr. Hampton was “very emotional” and tried to help her by moving her in an upright position. (App 738a-739a). Shortly thereafter, Monique died. (App 739a).

Mr. Hampton then went to the bedroom because he could hear CR wheezing. (App 740a). CR was lying on the bed and covered in a blanket. (App 741a). Mr. Hampton picked her up and noticed she was bleeding and not breathing. (App 742a). He attempted CPR, but was unsuccessful. (App 742a-743a).

After Monique and CR died, Mr. Hampton “lost it” and tried to drown himself in the tub. (App 743a-745a). Mr. Hampton then went back to the bedroom, brought

CR to the bathroom, and set her on top of Monique, so they could all be together for the last time. (App 746a-747a). Mr. Hampton also placed nickels that had fallen out of Monique's pockets over her eyes because it was something characters from her favorite movie, *Boondock Saints*, did. (App 750a-752a). He also put a pacifier in CR's mouth. (App 749a). Mr. Hampton attempted to drown himself again but was unsuccessful. (App 752a-753a).

- *Post-Incident Statements and Investigation*

Two days later, Monique's father went to her house to check on her. (App 116a-117a). Getting no answer to his knocks, Mr. Rakowski retrieved a key, let himself in, and searched the premises. (App 117a-119a). In the bathroom, he discovered Monique and CR lying on the floor, obviously dead. (App 121a).

An autopsy performed on Monique revealed 13 stab wounds to her midsection, one stab wound to the right arm, and a few "incised wounds on [her] fingers." (App 313a-314a). The medical examiner concluded the cause of death was multiple stab wounds and the manner of death was homicide. (App 318a). She found no physical signs of sexual assault. (App 319a). Toxicology analysis revealed Monique had alcohol, marijuana, and amphetamines in her system. (App 320a-324a)

The medical examiner concluded CR's cause of death was a single stab wound to the chest with perforation of the heart and lung and the manner of death was homicide. (App 348a).

Mr. Hampton turned himself in to the Dearborn Police the evening of February 13, 2015. Upon doing so, he described the incident to police similarly to his trial testimony. (App 527a-529a).

Later, Mr. Hampton gave another statement to investigators that was again similar to his account at trial. (App 548a, 598a-599a, 603a-604a, 614a-619a, 623a-625a, 627a-628a, 632a, 635a).

Appellate Proceedings

Mr. Hampton appealed, and on April 4, 2019, the Court of Appeals issued an unpublished *per curiam* opinion affirming Mr. Hampton's convictions and sentences.¹ (App 25a-33a). In the opinion, the court rejected an argument by Mr. Hampton that his conviction for felony murder should be vacated because the plain language of the statute requires that the murder be committed while "in the perpetration of" another crime, language that does not readily apply to a murder and another crime that both arise from the same, single act. The court concluded it was bound by its prior decision, *People v Magyar*, 250 Mich App 408, 410-412 (2002), which "held that a single assaultive act constituting first-degree child abuse can serve as the predicate felony for a felony-murder conviction related to the abused child." (App 29a-30a).

On December 23, 2019, this Court entered an order granting argument on the application for leave to appeal, and ordered the parties to file supplemental pleadings addressing "whether the Legislature intended to elevate to felony murder those

¹ The Court also vacated one of Mr. Hampton's convictions and remanded the case for the ministerial task of amending the judgment of sentence. (App 25a, 32a-33a)

instances of first-degree child abuse in which the only act of abuse is the child's murder.”

- I. **Mr. Hampton’s conviction for first degree murder under a felony murder theory cannot stand. The Legislature did not intend to elevate to felony murder those instances of first-degree child abuse in which the only act of abuse is the child’s murder. Rather, the felony murder statute requires a murder to be committed in the perpetration of or attempted perpetration of an enumerated offense with conduct distinct from the act of murder itself.**

Introduction

Mr. Hampton asks this Court to issue an opinion vacating his conviction for first-degree felony murder where a single stab wound was used as the act underlying both the predicate felony and the murder itself because the Legislature did not intend felony murder to apply in those circumstances. He also asks this Court to overturn *People v Magyar*, 250 Mich App 480 (2002), which held that a single assaultive act constituting first-degree child abuse can serve as the predicate felony for a felony murder conviction related to the abused child. *Magyar* was wrongly decided, as the Legislature did not intend to elevate all murders of a child by his or her custodian to first-degree murder.

Overruling *Magyar* and adopting Mr. Hampton’s position would not mean that the Legislature’s addition of first-degree child-abuse as a felony-murder predicate felony is without effect. The child-abuse form of felony murder encompasses murders that culminate from a course of abuse or a series of abusive actions, as well as murders of someone other than the child-abuse victim. What the rule does not contemplate is use of a single stab wound as the act underlying both the predicate felony and the murder itself.

Issue Preservation

Because insufficiency of evidence claims are reviewed *de novo*, the issue need not be raised at trial in order to preserve it for appellate review. *People v Patterson*, 428 Mich 502, 514 (1987).

Standard of Review

This Court reviews insufficient-evidence claims *de novo* to determine whether a rational trier of fact could have found that Mr. Hampton's guilt was proven beyond a reasonable doubt. *Jackson v Virginia*, 443 US 307 (1980); *People v Wolfe*, 440 Mich 508, 515 (1992); *People v Hampton*, 407 Mich 354, 368 (1979).

The interpretation and application of statutes is a question of law and is reviewed *de novo*. *People v Babcock*, 469 Mich 247, 253 (2003). A court's primary purpose in construing a statute is to ascertain and give effect to the Legislature's intent. *People v Williams*, 475 Mich 245, 250 (2006). The most relevant starting point for discerning legislative intent lies in the plain language of the statute. *Id.* "When the language of a statute is clear, it is presumed that the Legislature intended the meaning expressed therein." *Frank v Linkner*, 500 Mich 133, 143 (2017) (citations and quotation marks omitted). If the Legislature uses clear and unambiguous language, courts must enforce the statute as written. *People v Barbee*, 470 Mich 283, 286 (2004).

Where there is a potential lack of clarity or ambiguity, the general rule of statutory construction is that criminal statutes must be strictly construed, and any ambiguity is to be resolved in favor of lenity. *People v Dempster*, 396 Mich 700, 707,

715 (1976); *People v Whetstone*, 131 Mich App 669, (1984). Criminal statutes cannot be extended to conduct not included within the clear and obvious import of their language. *People v Jones*, 142 Mich App 819, 823 (1985). If there is doubt as to whether the act charged is embraced in the prohibition, that doubt is to be resolved in favor of the defendant. *Id.* “This rule of narrow construction is rooted in the concern of the law for individual rights, and in the belief that fair warning should be accorded as to what conduct is criminal and punishable by deprivation of liberty or property.” *Huddleston v United States*, 415 US 814, 831 (1974).

Argument

- A. The felony murder and first-degree child abuse statutes have overlapping intent requirements. As charged and argued here, first degree child abuse was essentially assault with intent to do great bodily harm to a child.**

MCL 750.316(1)(b) & (c) elevate homicides from second to first degree murder under two separate circumstances: felony murder, where a murder is combined with the commission of an enumerated offense; and special victim murder, where a peace officer or corrections officer is murdered while performing their official duties. When these circumstances occur, the Legislature requires the highest sentence permissible under Michigan law – mandatory life without parole.

Mr. Hampton was convicted of felony murder, which required proof that (1) he killed someone; (2) that he acted with “malice”, which includes the intent to kill, the intent to do great bodily harm, or the intent to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm would be the

probable result; and, (3) that he killed someone “in the perpetration of, or attempt to perpetrate”:

arson, criminal sexual conduct in the first, second, or third degree, child abuse in the first degree, a major controlled substance offense, robbery, carjacking, breaking and entering of a dwelling, home invasion in the first or second degree, larceny of any kind, extortion, kidnapping, vulnerable adult abuse in the first or second degree under section 145n, torture under section 85, aggravated stalking under section 411i, or unlawful imprisonment under section 349b.

MCL 750.316(1)(b); *People v Carines*, 460 Mich 750, 759 (1999); *People v Aaron*, 409 Mich 672, 733 (1980).

The predicate felony here is first degree child abuse. MCL 750.136b(2), provides in relevant part that “[a] person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical harm or serious mental harm to a child.” To prove first-degree child abuse, the prosecutor must show that the “defendant intended to commit the act” and that the “defendant intended to cause serious physical [or serious mental] harm or knew that serious physical [or serious mental] harm would be caused by” the act. *People v Maynor*, 470 Mich 289, 291 (2004). “Serious physical harm” is defined as “any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.” MCL 750.136b(1)(f).

The intent required for both murder and first-degree child abuse is overlapping and, in this case, is essentially the same. This is so because any assaultive act

intended to cause “serious physical harm” that resulted in death would satisfy the intent requirement for murder, which requires, at a minimum, an intent to do great bodily harm. See *Carines*, 460 Mich at 759. Great bodily harm is defined as “any physical injury that could seriously harm the health or function of the body.” See M Crim JI 17.7(4); *People v Ochotski*, 115 Mich 601, 608 (1898) (defining great bodily harm as “an intent to do serious injury of an aggravated nature.”). This definition is no different than the definition of “serious physical harm,” which includes, among other things, “a physical injury to a child that *seriously impairs the child’s health or well-being*.” See MCL 750.136b(1)(f)(emphasis added).

Thus, as charged and argued below, both the first-degree child abuse and the murder itself were, for all relevant purposes, one in the same. Both the felony murder and first-degree child abuse counts related to the death of Mr. Hampton’s 13-month old daughter, CR. With respect to those charges, it was the prosecutor’s theory that Mr. Hampton killed CR, who died of a single stab wound to the chest, while committing first-degree child abuse. The first-degree child abuse charges were based on that same act, a single stab wound. The prosecutor did not argue, and there was no evidence from which to find, that Mr. Hampton had abused CR before, earlier that night, or ever.

The result is that Mr. Hampton was convicted of first-degree child abuse and felony murder based on a single act for offenses that have overlapping intent requirements. As argued below, this result is inconsistent with the plain language of MCL 750.316(1)(b), which requires a murder to be committed “in perpetration of” an

enumerated felony. It is also inconsistent with the statute as a whole because applying the felony murder statute to these circumstances elevates children to a special victim status. The Legislature did not intend this result as it limited special victims in MCL 750.316(1)(c) to peace officers and corrections officer. See MCL 750.316(2)(b)(i-iii)&(d)(i-iii).

B. Examination of the plain language of MCL 750.316(1)(b) and (1)(c) reveals the Legislature did not intend to base felony murder convictions on the same single act as the predicate felony of first degree child abuse.

Whether a single act could be the basis for both the “felony” and the “murder” that established the felony-murder conviction turns on the Legislature’s intent when it added first-degree child abuse to the list of predicate felonies in MCL 750.316(1)(b). An important guide for determining legislative intent is the statutory language and how that language fits within the statutory scheme. As this Court explained in *Sun Valley Foods Co v Ward*, 460 Mich 230, 236-37 (1999), a reviewing court's

primary task in construing a statute . . . is to discern and give effect to the intent of the Legislature. . . . This task begins by examining the language of the statute itself. The words of a statute provide ‘the most reliable evidence of intent’ . . .

[W]e consider both the plain meaning of the critical word or phrase as well as ‘its placement and purpose in the statutory scheme.’ . . .” (internal citations omitted).

Here, MCL 750.316(1)(b) does not provide for felony murder when a victim is killed as the result of the commission of one of the enumerated felonies. Nor does it say that felony murder is committed when a person kills “while committing” one of the listed felonies. Rather, MCL 750.316(1)(b) requires that a “murder” be “committed

in the perpetration of, or the attempt to perpetrate” a separate enumerated felony. This phrase reflects the Legislature’s intent to limit the application of the statute to circumstances where an individual commits a murder while carrying out or attempting to carry out some enumerated offense distinct from the act of murder itself. The first part of the phrase, “murder committed,” imposes the requirement that a murder take place. According to Black’s Law Dictionary (11th ed. 2019), “commit” is defined as “[t]o perpetrate (a crime).”

The second part of the phrase requires the perpetration or attempted perpetration of an enumerated offense. This Court has cited approvingly to the definitions of “perpetrate” and “carry out” that are set forth in the Random House Webster’s College Dictionary (1997): “Perpetrate’ is defined as ‘to carry out’; enact; commit.’ To ‘carry out’ is defined as ‘to effect or accomplish; complete.’” *People v Gillis*, 474 Mich 105, 115 (2006) (internal citations omitted). These definitions are consistent with other sources regularly used by this Court to determine the meaning of terms. For example, Black’s Law Dictionary (11th ed. 2019) defines “perpetrate” as “[t]o commit or carry out (an act, esp. a crime).” Each of these definitions, when combined with the language of MCL 750.316(1)(b), describe a factual scenario where (1) a murder occurs; and (2) the murder is committed while another distinct crime is being carried out. In other words, the plain language of the statute implies the commission of a “murder” and the commission of a crime separate from the act of murder itself.

This reading of MCL 750.316(1)(b) is consistent with *People v Gillis*, where this Court indicated that the phrase “murder” done “in the perpetration of” a felony connotes separation between the murder itself and the predicate felony:

the term “perpetration” encompasses acts beyond the definitional elements of the predicate felony, to include those acts committed within the *res gestae* of that felony.

* * * *

To summarize, “perpetration” as used in the felony-murder statute contemplates something beyond the definitional elements of the predicate felony. Michigan courts have recognized this broader common-law meaning through the adoption of the “*res gestae*” principle, which holds that a murder committed during the unbroken chain of events surrounding the predicate felony is committed “in the perpetration of” that felony.

Gillis, 475 Mich at 121 & 125; *cf People v Aaron*, 409 Mich 672, 699 (1980 (recognizing the modern trend toward requiring that the “underlying felony must be ‘independent’ of the homicide” in applying the felony murder rule), citing Model Penal Code (Tentative Draft No. 9, 1959), section 201.2 Comment 4.

Statutory felony murder, therefore, requires proof of a murder that occurred in the context of other dangerous criminal behavior; it does not raise the degree of murder according to the identity of the victim. The plain language of the statute supports this reading: it requires that the murder be committed while “in the perpetration of” another crime. This language does not apply to a murder and another crime that both arise from the same, single act. Moreover, as discussed below, examination of the statutory scheme for homicide shows that the felony-murder rule applies only to “dangerous behavior” murders. When the Legislature has chosen to

treat “special victim” murders as first-degree murder, it has done so elsewhere within the statute, outside the felony-murder part of it.

That the Legislature intended this result is supported by examining the placement of first-degree child abuse within the murder statute and the interplay between MCL 750.316(1)(b) and MCL 750.316(1)(c). MCL 750.316(1)(b) lists numerous other “dangerous behavior” predicate felonies that require proof of criminal acts apart from the act of murder itself: arson, first-, second-, or third-degree criminal sexual conduct, a major controlled substance offense, robbery, carjacking, breaking and entering of a dwelling, first- or second-degree home invasion, larceny, extortion, or kidnapping. The only two crimes from that lengthy list where it would be conceivable to commit both the murder and the predicate felony in a single act are first degree child abuse and vulnerable adult abuse. The difference between those two crimes and the others on the list is that each specifies a victim – children and vulnerable adults – while the others do not. Applying the felony murder statute as it was in this case thus effectively establishes a de facto special-victim form of murder.

But the Legislature knew how to create a special victim form of first-degree murder, and it did so in the very next subsection. Under MCL 750.316(1)(c), an individual is guilty of first-degree murder and subject to a mandatory life without parole sentence when certain identified victims are killed:

A murder of a peace officer or a corrections officer committed while the peace officer or corrections officer is lawfully engaged in the performance of any of his or her duties as a peace officer or corrections officer, knowing that the peace officer or corrections officer is a peace officer or corrections

officer engaged in the performance of his or her duty as a peace officer or corrections officer.²

Children are not listed and are not included as a special victim.

Had the Legislature meant to create a new form of first-degree murder where child victims are involved, it undoubtedly would have chosen to do so in Subsection (1)(c), as it did with the police-officer-murder. It chose not to include children in that list. Instead, it referenced child victims in the previous section, requiring proof that a “murder” be committed in the “perpetration” of first-degree child abuse.

This speaks volumes. In construing the meaning of statutory terms and clauses, context, placement, and grouping is significant. See *People v Vasquez*, 465 Mich 83, 89 (2001). As this Court has explained:

[Statutes exist] and must be read in context with the entire act, and the words and phrases used there must be assigned such meanings as are in harmony with the whole of the statute. . . “[W]ords in a statute should not be construed in a void, but should be read together to harmonize the meaning, giving effect to the act as a whole.” Although a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context. “In seeking meaning, words and clauses will not be divorced from those which precede and those which follow.” It is a familiar principle of statutory construction that words grouped in a list should be given relative meaning.

People v Hill, 486 Mich 658 668 (2010) (quoting *G.C. Timmis & Co. v Guardian Alarm Co.*, 468 Mich 416, 420-422 (2003)) (internal citations omitted). The placement of first-degree child abuse in Subsection (1)(b) rather than Subsection (1)(c) reflects a

² The statute provides definitions of “peace officer” and “corrections officer.” See MCL 750.316(2)(b)(i-iii)&(d)(i-iii).

conscious intent not to make murder of a child a special victim-crime. Moreover, the Legislature groups first-degree child abuse with a host of felonies that do require acts beyond the one causing death. Giving “child abuse in the first degree” meaning and application similar to the crimes on the list reflects a legislative intent to make the “murder” independent from yet interrelated with, the commission of first degree child abuse. *Hill, supra*.

In summary, murder committed “in the perpetration of” an enumerated felony does not mean “murder for which the defendant would also be guilty of that same felony.” If, for example, a person shot and killed another, we would not normally say that he committed murder while “in the perpetration” of a felonious assault, an assault with intent to do great bodily harm, or an assault with intent to murder, though the one act could be the basis for all three charges. That the felony-murder part of the statute is reserved for murders that occur during otherwise dangerous criminal behavior is apparent from context, both within and without the murder statute itself. It is apparent from within the statute because the felony-murder subsection of the murder statute lists a number of other predicate felonies, all of which require proof of criminal behavior apart from the act of murder itself. See MCL 750.316(1)(b). It is apparent from without because the traditional justification for the felony-murder rule is that certain felonies increase the risk that someone will die because those felonies are inherently dangerous, and that the decision to undertake the inherently dangerous behavior is just as blameworthy as a decision to kill. See, eg, Perkins & Boyce, *Criminal Law* (3d ed, 1982), p 63. If the rule is changed to blur

the distinction between the otherwise dangerous behavior and the killing that arises from it—if, in other words, the dangerous context supposed to substitute for malice aforethought becomes the murderous act itself—then the rule is unmoored from its rationale.

C. *People v Magyar* was wrongly decided because its holding is inconsistent with the plain language of MCL 750.316 and its analysis failed to address the precise legal question presented.

There are two Court of Appeals decisions at the core of the issue presented here: *People v Magyar*, 250 Mich App 480 (2002) and *People v Jones*, 209 Mich App 212 (1995). In *Jones*, the Court of Appeals addressed a straightforward application of the felony-murder rule. Mr. Jones was charged with felony murder for a killing committed during the perpetration of a breaking and entering with an intent to commit an assault. *Jones*, 209 Mich App 214-215. This fact pattern presents the classic felony murder scenario where there is (1) a murder committed and (2) the murder is committed in perpetration of a distinct enumerated criminal offense – a breaking and entering with intent. *Id.*

The analysis from *Jones*, which the *Magyar* court eventually relied upon, was made in response to defense arguments that “the predicate felony of breaking and entering with the intent to commit an assault is not a felony independent of the homicide” and a request adopt the merger doctrine. *Id.* at 214. The court, in declining to adopt the merger doctrine, concluded the doctrine was inconsistent with the purpose of the statute which it stated was “to graduate punishment and ... the statute only serves to raise an already established *murder* to the first-degree level, not to

transform a death, without more, into a murder.” *Id.* at 215, citing *People v. Aaron*, 409 Mich. 672, 719 (1980). The *Jones* court also rejected the defense argument that the use of breaking and entering with intent was improper by holding the felony murder statute “clearly allows all murder committed in the perpetration or attempted perpetration of the enumerated felonies to be treated as first-degree murder.” *Id.* at 215. As a result, the issue presented in *Jones* is different than the issue presented both here and in *Magyar*.

In *Magyar*, the Court of Appeals was faced with the same legal issue presented here: whether the Legislature intended to elevate to felony-murder those instances of first-degree child abuse in which the only act of abuse is the child’s murder; the court decided the statute applied to such circumstances. 250 Mich App at 410-413. Despite the obvious difference in the factual scenario presented in the cases, the *Magyar* court adopted the reasoning of *Jones* without a meaningful examination of the statutory language or the facts of the case - a single assault as the act underlying both the predicate felony and the murder itself. *Id.* at 410-413. The court also failed to recognize that the offense in *Jones* – breaking and entering with intent – implicitly involves conduct distinct from the commission of a murder. The result is that the *Magyar* court failed to address the precise legal question before it. *Id.* 410-413. The reasoning in *Magyar*, therefore, should be rejected.

This does not mean that the Legislature’s addition of first-degree child-abuse as a felony-murder predicate felony is without effect. The child-abuse form of felony murder encompasses murders that culminate a course of abuse, as well as murders

of someone other than the child-abuse victim. What the rule does not contemplate is use of a single stab wound as the act underlying both the predicate felony and the murder itself. To apply the felony murder rule to this circumstance would elevate children to have a special victim status under the statute – a decision our Legislature declined to make when it added first-degree child abuse as an enumerated offense and added peace and corrections officers as special victims in 1994. Because that was the theory by which Mr. Hampton was convicted of first-degree felony murder, his conviction must be vacated.

Summary and Relief

WHEREFORE, for the foregoing reasons, Mr. Hampton asks that this Honorable Court grant his previously submitted application for leave to appeal and vacate his conviction for felony murder.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

/s/ Jason R. Eggert

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