

**STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

vs.

CODIE LYNN STEVENS,

Defendant-Appellee.

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File No. 15-041275-FH-3

COA Docket #337120

Supreme Court No. \_\_\_\_\_

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**DEFENDANT APPELLEE'S ANSWER TO  
PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

Defendant-Appellee, CODIE LYNN STEVENS, by and through her Attorney, ROBERT J. DUNN, hereby submit their Answer to Plaintiff-Appellant's Application for Leave to Appeal pursuant to MCR 7.305 (D) as follows:

**ARGUMENT I**

The Court of Appeals did not err in finding that the Defendant-Appellee did not commit an act that was likely to cause serious physical harm under the statute and further did not err by relying upon People v. Murphy, 321 Mich App 355 (2017).

The Prosecutor argues that unlike in Murphy the panel here had no trouble identifying acts such as the use of home remedies, specifically using a cold compress and giving the child

peppermint water. However, those acts were not causative factors in the serious harm caused to the child which makes a big difference.

While the Defendant-Appellee's failure to seek the appropriate professional medical care for the child following the bathtub fall may have constituted an omission, it did not constitute an act and the Murphy decision says it will have to be an act to fall under that particular child abuse statute charged here. The Peoples' expert, as they argue, testified that the lab results came back unremarkable for sodium deficiencies and electrolyte imbalances that could be the cause for the brain swelling and seizures. There was no testimony in the trial from the experts that they believe excessive water caused the harm. The Prosecutor then argues that the Court of Appeals panel's position "was contradicted by the medical professionals who testified at trial", but provides no specifics for this court to rely upon to support that conclusion.

## **ARGUMENT II**

The Court of Appeals published decision in People v. Head, 323 Mich App at 526 (2018) did not overrule the Murphy decision and was in fact distinguished from Murphy by the panel below which panel included one of the Judges from the Head panel.

The People's argument that the panel decision should be reversed because it does not follow the later published decision in Head is without merit.<sup>1</sup>

The cases are quite distinguishable. Head was a manslaughter case in which there also was a charge of second-degree child abuse. There, the Defendant-Appellee argued that there was insufficient evidence of gross negligence to establish the involuntary manslaughter which conclusion the Court of Appeals disagreed with. In Head the court found a grossly negligent act

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<sup>1</sup> Judge Tukul sat on both per curiam panels, Stevens and Head, and certainly could not be said to have been unaware of the Head decision at the time Stevens was decided.

by the Defendant-Appellee in keeping an illegal, loaded short-barreled shotgun in an unlocked closet in the bedroom where the child of 10 years had unsupervised access to. The Defendant-Appellee appealed the conviction also of the second-degree child abuse conviction under MCLA 750.136 (B) (3) and challenged whether or not the proofs established the Defendant-Appellee committed a reckless act. The court clearly found a reckless act by allowing the loaded gun to be in the child's bedroom.

In fact, the panel in Head quoted from Murphy in rendering its decision finding "that simply failing to take an action does not constitute an act". Murphy at page 361. The Court stated as follows:

“Contrary to Defendant’s argument, the present case is nothing like Murphy, in which the court held that the prosecutor presented no evidence of an affirmative act by the Defendant that led to the child’s death but instead presented evidence only of the Defendant’s inaction of failing to clean her house to ensure that morphine pills were not in reach of the child“. Murphy at page 361

The panel in Stevens made the exact same finding in following Murphy.

### **ARGUMENT III**

The court of appeals did not impose an overly narrow reading of the statutory phrase “willful abandonment”.

The Court of Appeals did not commit reversible error by utilizing Webster’s Collegiate Dictionary’s 11th Edition definition of "abandoned" rather than that advocated by the Prosecutor, Webster’s ninth new collegiate dictionary definition. The panel certainly had no obligation to follow the earlier definition

It was also not error by the panel to fail to recognize language from the 1907 decision of this Court in People v. Beardsley regarding the unique duties parents owe their children when

that language long ago had been rendered moot by the adoption by the Michigan Legislature of the four degrees of criminal child abuse with the various definitions set forth in the statute.

Based on all these reasons, this Court should deny the application. In the event that this Court were to grant the application and ultimately grant the relief requested, at best for the People the case has to be remanded to the Court of Appeals since the issue of ineffective assistance of counsel issue did not need to be reached with the decision they rendered.

Date: September 24, 2019

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I hereby certify that Defendant-Appellant Codie Steven's Defendant-Appellee's Answer to Plaintiff-Appellant's Application for Leave to Appeal under MCR 7.305 (D) was electronically filed on this date with the Clerk of the Court and all the parties of the case by Robert J. Dunn's office, Attorney for Defendant-Appellee and also mailed to Defendant-Appellee Codie Stevens by US Mail.

DATED: September 24, 2019

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