RECEIVED by MSC 12/9/2020 6:01:55 PM

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee,

-vs-

JOEL EUSEVIO DAVIS

Defendant-Appellant.
_____/

Supreme Court No. 160775

Court of Appeals No. 332081

Circuit Court No. 15-5481-01

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

_____

STATE APPELLATE DEFENDER OFFICE
Attorney for Defendant-Appellant

_____

APPENDIX TO DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF AFTER REMAND

STATE APPELLATE DEFENDER OFFICE

BY: Jacqueline J. McCann (P58774)
Michael L. Mittlestat (P68478)
Maya Menlo (P82778)
3031 W Grand Blvd, Suite 450
Detroit, MI 48202
(313) 256-9833

RECEIVED by MSC 12/9/2020 6:01:55 PM

Index of Appendices

Information 1a

Jury Trial 2/16/16 (Pages 149 – 160) ..... 2a – 13a

Jury Trial 2/16/16 (Pages 168 – 170) 14a-16a

Jury Trial 2/16/16 (Pages 179 - 180) ..... 17a – 18a

Jury Trial 2/16/16 (Pages 189 - 192) ..... 19a – 22a

Jury Trial 2/16/16 (Page 200) 23a

Jury Trial 2/17/16 (Pages 96 - 103) ..... 24a – 31a

Jury Trial 2/17/16 (Pages 120 - 123) ..... 32a – 35a

Sentence 3/19/16 (Pages 20 – 23) ..... 36a – 39a

Judgment of Sentence 40a

MSC Order 3/22/19 ..... 41a – 42a

COA Opinion (On Remand) 11/12/19 ..... 43a – 51a

MSC Order 6/5/20 ..... 52a

RECEIVED by MSC 12/9/2020 6:01:55 PM

2015711764

STATE OF MICHIGAN **CASE NO:** 8215005481

AMENDED INFORMATION
FELONY

20TH DISTRICT COURT
3RD JUDICIAL CIRCUIT

The People of the State of Michigan

vs

JOEL EUSEVIO DAVIS 82-15711764-01

Offense Information
Police Agency / Report No.
DEARBORN HTS PD 15-10162
Date of Offense
06/10/2015
Place of Offense
35650 HASS, DEARBORN HEIGHTS
Complainant or Victim
SHAWNA LYNN SHELTON
Complaining Witness
D/SGT PHIL WENGROWSKI

STATE OF MICHIGAN, COUNTY OF Wayne
In the name of the People of the State of Michigan: The Prosecuting Attorney for this county appears before the Court and informs the Court that on the date and at the location above described, the Defendant(s)

COUNT 1: DOMESTIC VIOLENCE - AGGRAVATED
did, assault Shawna Shelton, a resident or former resident of his household, or , an individual with whom he had a dating relationship, without a weapon, and did inflict serious or aggravated injury upon her, but without intending to commit murder or to inflict great bodily harm less than murder; contrary to MCL 750.81a(2). [750.81A2]
MISDEMEANOR: 1 Year and/or $1,000.00. A consecutive sentence may be imposed under MCL 750.506a if the assault was committed in a place of confinement.
SECOND OFFENSE NOTICE
Take notice that the defendant was previously convicted of assaulting or assaulting and battering his or her spouse, former spouse, an individual with whom he or she had a dating relationship, an individual with whom he or she had a child in common, or a resident or former resident of his or her household by violating MCL 750.81(2) on or about 07/03/2014, and therefore, upon conviction, will be subject to an enhanced sentence under MCL 750.81a(3) or MCL 750.81. [750.81A3]
FELONY: 5 Years and/or $5,000.00. A consecutive sentence may be imposed under MCL 750.506a if the assault was committed in a place of confinement.

COUNT 2: ASSAULT WITH INTENT TO DO GREAT BODILY HARM LESS THAN MURDER
did make an assault upon Shawna Lynn Shelton with intent to do great bodily harm less than the crime of murder; contrary to MCL 750.84. [750.84].
FELONY: 10 Years or $5,000.00. DNA to be taken upon arrest. A consecutive sentence may be imposed under MCL 750.506a if the assault was committed in a place of confinement.

COUNT 3: MOTOR VEHICLE - UNLAWFUL DRIVING AWAY
did willfully and without authority, take possession of and drive or take away, or did assist in, or was a party to such taking possession, driving or taking away, of a motor vehicle, to-wit: an automobile belonging to another, to-wit: Shawna Lynn Shelton; contrary to MCL 750.413. [750.413]
FELONY: 5 Years; SOS to suspend driver's license

COUNT 4: LARCENY - $200.00 OR MORE BUT LESS THAN $1,000.00
did commit the offense of larceny by stealing money and cellphone, that belonged to Shawna Lynn Shelton, the value of the property stolen was $200.00 or more but less than $1,000.00; contrary to MCL 750.356(4)(a). [750.3564A]
MISDEMEANOR: 1 Year and/or $2,000.00, or 3 times the value of the property stolen, whichever is greater. To impose a fine of 3 times the value, the defendant must admit the amount, or it must be determined by the trier of fact at trial. See *Southern Union Co. v United States 567 U.S. ___; No. 11-94 (2012)*

Upon conviction of a felony or an attempted felony court shall order law enforcement to collect DNA identification profiling samples.

and against the peace and dignity of the State of Michigan.

_____
Date

Kym Worthy
P38875
Prosecuting Attorney
By: Shelley Drai P60249
Bar Number

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 Q. I wanna take you back to June 10th of 2015. On that day,
2 where were you living?
3 A. On Hass Street in Dearborn Heights.
4 Q. Do you remember the address?
5 A. 24540.
6 Q. Okay. And is that in Wayne County?
7 A. Yes.
8 Q. And who were you -- were you living with someone?
9 A. Yes.
10 Q. Who were you living with?
11 A. Mr. Davis.
12 Q. And do you see Mr. Davis in court today?
13 A. Yes.
14 Q. Could you please point to him and describe something he is
15 wearing?
16 A. White shirt.
17 MS. MATHENA: Your Honor, let the record reflect
18 that the witness has identified the defendant Mr. Davis.
19 THE COURT: Noted.
20 Q. (By Ms. Mathena, continuing): And what was your
21 relationship with Mr. Davis at that time?
22 A. Boyfriend and girlfriend.
23 Q. How long had you been dating?
24 A. Seven months.
25 Q. Okay. And when did he move in?

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 A. March, I would say.
2 Q. Okay. I wanna take you to in the early morning hours of
3 June 10, 2015. Did something happen that morning?
4 A. Yes.
5 Q. What happened?
6 A. Um, around 4:00 A.M., I was sleeping with the lights
7 turned on by Mr. Davis and, um, he asked for where the
8 ashtray was. And I did not make eye contact with him and,
9 um --
10 Q. How did you respond when he asked you where the ashtray
11 was?
12 A. I said I didn't know, and I had an attitude cause it was
13 in the middle of the night.
14 Q. Okay. And you said you had been sleeping up to this
15 point?
16 A. Yes.
17 Q. All right. And I should ask you, ma'am, who is your --
18 the house that you lived in at the time, what is the
19 layout of the house?
20 A. When you come through the front door, it's you have the
21 living room. Then off to your left is -- that was our
22 bedroom. And then you go back into the living room there
23 is the kitchen, and the two other bedrooms and bathroom
24 are off the back of the house.
25 Q. And is there a back door to the house?

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 A. Yes.
2 Q. Okay. So take us back again.
3 So you're woken up around 4:00 or 5:00 A.M., and
4 you respond with a little bit of an attitude and said you
5 didn't know. What happened next?
6 A. He, um, starts yelling and then starts grabbing my shirt
7 and --
8 Q. Who starts yelling?
9 A. Mr. Davis.
10 Q. Okay. And --
11 A. And says that I don't make -- it's disrespectful I didn't
12 make eye contact with him.
13 Q. What did he -- did he do anything at that point?
14 A. He started -- that's when he grabbed me by my shirt and
15 yanked me out of my bed onto the floor.
16 Q. And can you tell us where were you laying in bed?
17 A. I was -- the bed was up against the wall and I was up
18 against the wall on the bed. So I was furthest away from
19 the floor.
20 Q. Okay.
21 A. And he yanked -- he yanked my collar.
22 Q. Okay.
23 A. Of my shirt.
24 Q. And what happened after he yanked your collar?
25 A. Um, like I started to get like what the "F" is going on.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 He got mad and hit me about two or three times in my face
2 and in my head then in the bedroom. And every time like I
3 would -- I was yelling stop and like what the "F."
4 Q. When he was hitting you, where were you at this point?
5 A. Well when he yanked me out of the bed -- so he like threw
6 me on the floor, and I was on the floor when he started
7 hitting me the two or three times in our room.
8 Q. Okay. And was he looking up or -- I'm sorry.
9 Were you looking up at him as he was hitting
10 you?
11 A. Um, yes.
12 Q. And was he hitting you hard?
13 A. Um, yes.
14 Q. How hard was he hitting you?
15 A. I have never felt that much pain.
16 Q. And where -- you said he hit you in your face and your
17 head?
18 A. He hit me in my head and my eye and my lip in the bedroom.
19 Q. Do you remember which eye he hit you?
20 A. My left eye.
21 Q. Were you saying anything at this point?
22 A. Just please stop, what the "F" is going on, you know.
23 Scared.
24 Q. Scared?
25 A. Uh-huh.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 Q. What happened next?
2 A. So then like I went to get up and kind of run towards, you
3 know, anywhere I could run to away from him. And, um, our
4 bedroom is right off of the living room and I -- he like
5 charged at me and then hit me two or three more times in
6 the living room. That's where I fell to the ground.
7 And, um, I know he hit me in my nose in the
8 living room because that's when I felt the blood started
9 draining from my nose.
10 Q. Okay. So you managed to run to the living room and then
11 once you got --
12 A. A couple steps.
13 Q. A couple steps. It's not that far between the bedroom and
14 the living room?
15 A. Right.
16 Q. Okay. So you made it a couple steps and then you said the
17 defendant came back and began punching you again?
18 A. Uh-huh.
19 Q. Do you know how many times he punched you in the living
20 room?
21 A. I would say two.
22 Q. Okay. And, again, how was he punching you? Was it hard?
23 A. Very hard.
24 Q. Okay. And you said he punched you at least in the nose on
25 that time?

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 A. Yeah. I remember feeling the drainage of blood going
2 coming out of my nose in the living room.
3 Q. And were you able to see very well at this point?
4 A. Not at all.
5 Q. Why not?
6 A. My left eye was swollen shut.
7 Q. Okay. And were you bleeding on the carpet?
8 A. Yeah, my whole mouth was full of blood.
9 Q. Was the defendant saying anything when you guys were in
10 the living room?
11 A. He just told me, um -- he kept telling me to shut up and I
12 kept saying, "Stop hitting me. Stop hitting me." And
13 then he said, "You're gonna make me have to kill you," and
14 that's when I kind of stopped saying things.
15 Q. Why did you stop saying things at that point?
16 A. Because the look in his eyes was like he noticed -- he
17 noticed that's the only way he was gonna get out of it is
18 to kill me.
19 Q. You want to take -- there is Kleenex right next to you.
20 Just go ahead and take a minute.
21 A. Cause like he noticed how bad my face was.
22 Q. You need a second? Are you okay?
23 A. Good.
24 Q. Okay. At this point, were you trying to fight back at
25 all?

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 A. No, I wasn't fighting. I was just like every time he
2 would go to hit me, just kind of push him off of me cause
3 I could not get away. He just kept hitting me openly
4 handed, too, after, you know, closed handed.
5 Q. Okay. And I should have asked you before. How tall are
6 you, ma'am?
7 A. 5'1".
8 Q. Do you know how tall the defendant is?
9 A. I think 6'2" or "3.
10 Q. So after the defendant said, "You're going to make me have
11 to kill you," what did you do next?
12 A. Like he -- he called -- like it calmed down. He stopped
13 yelling. And I got up and ran to the bathroom. And, um--
14 Q. What did you do once you were in the bathroom?
15 A. Just start -- I washed my mouth out. Like just opened my
16 mouth and it just came out. The blood started comin' out.
17 Q. How were you feeling at this point?
18 A. Scared for my life, bad.
19 Q. And so you started rinsing your mouth out. Did you do
20 anything else?
21 A. Um, like I remember looking in the mirror but I couldn't
22 see nothing cause both of my eyes were swollen shut. And
23 then -- and then I came back out and he wasn't there,
24 so --
25 Q. Had he said anything that you heard about leaving or

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 anything like that?
2 A. No.
3 Q. Okay. So you came out of the bathroom, you saw that he
4 was gone. Did you notice anything else?
5 A. Well my immediate reaction was to get to my phone to call
6 the police, so I started looking for my phone.
7 Q. Were you able to find it?
8 A. I could not find my phone.
9 Q. Was it -- did you look where you had left it?
10 A. No, my -- that's when I remembered I left it in my purse.
11 I looked in my purse. My keys, my house keys, my check
12 that I just got cashed, my money that I just got cashed
13 the night before $400, my phone was all gone. I looked
14 out in the driveway and my car was gone, too.
15 Q. And that had you done anything with those items to move
16 them from where you last left them or anything like that?
17 A. No.
18 Q. And was there anybody else that would have come into your
19 house in between when you saw them last and when you
20 noticed that they were missing aside from yourself and the
21 defendant?
22 A. No.
23 Q. Oh, that's right. So the lady in front of you is taking
24 down everything that you say, okay. So if you can try to
25 keep your voice up as high as possible, and you have to

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 answer with yes's, no's and whatever other words, but no
2 uh-huh's and ung-ung's, okay?
3 A. Okay.
4 Q. Okay. So you noticed that your money -- you said it was
5 about $400?
6 A. Yes.
7 Q. Okay. And your phone was also missing?
8 A. Yes.
9 Q. How much -- how expensive was your phone?
10 A. I would say $140 I paid for the phone.
11 Q. Okay. So once you noticed these items were missing and
12 that your car was gone you said?
13 A. Yes.
14 Q. What kind of a car was it?
15 A. 2001 Jeep Cherokee.
16 Q. What color car?
17 A. Black.
18 Q. Once you noticed that it was gone, what did you do?
19 A. I changed my shirt.
20 Q. Why did you change your shirt?
21 A. Because it had blood all over it, and it was ripped from
22 him yanking me out of the bed.
23 Q. Okay.
24 A. And I grabbed a rag because I just kept constantly
25 bleeding, and then I heard the truck pull back up.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 Q. Your truck?
2 A. Yeah. And --
3 Q. When you heard the truck pull back up -- well let me back
4 up.
5 When you stated that you change your shirt and
6 to clean up your face, what was your intent at that point?
7 A. To get the heck out of there as fast as I could.
8 Q. Okay. So what was your reaction when you heard your truck
9 pull back up?
10 A. That I would -- how do I get out of here without him
11 getting me again. Because our front door -- um, we have a
12 front door and then all the way in the back is the back
13 door. And our yard was fenced in and I had to go up the
14 driveway to get out of our yard, fenced yard.
15 Q. Okay.
16 A. So I stood at the back of the door, back door of the house
17 and --
18 Q. Why did you -- why were you standing at the back door of
19 the house?
20 A. Until I seen him actually step foot in the house. Because
21 I had to run back up the driveway past him to get out.
22 Q. So let me stop you.
23 So why were you waiting for him to come in the
24 house before you left? What was the reason?
25 A. So he wouldn't kill me. There was no question about that.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 Q. So when you heard the defendant come back in the house,
2 were you able to go out of the back door?
3 A. Yep. I ran.
4 Q. Where did you run to?
5 A. Um, I knocked on about four or five houses and they didn't
6 answer. I would say about the fifth or sixth house
7 answered and I asked to use their phone. And I stayed
8 there until the police came.
9 Q. Do you remember about what time this was now?
10 A. I think it was about five or six maybe. I don't know.
11 Q. Okay. So you were able to call the police from this
12 house?
13 A. Yes.
14 Q. Okay. And did you tell the police that you would be
15 waiting at this house for them?
16 A. Yes.
17 Q. And you waited there for them to get there?
18 A. Yes.
19 Q. And what happened once they got there?
20 A. They took pictures of my face and we went back over to my
21 house. Because I said, you know, he has my phone, he has
22 everything of mine.
23 Q. Okay. And when you went back to the house -- and this is
24 the 24550 Hass, right?
25 A. Yep.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 Q. When you went back there, was your Jeep in the driveway?
2 A. No.
3 Q. What did you and the officers do once you got to the
4 house?
5 A. We went in to see like maybe I overlooked my phone.
6 Q. Okay. I am gonna stop you. How did you get in the house?
7 A. The officer used a little wedger thing to open the door.
8 Q. Okay. So you didn't have -- you still didn't have your
9 keys?
10 A. Nope. No.
11 Q. Okay. So the officer gained access to the house?
12 A. Yes.
13 Q. Okay. And then did you go inside?
14 A. Yes.
15 Q. Okay. And what did you see once you got inside?
16 A. I seen the blood that was on the floor. I just remember I
17 was just looking really frantic like cause I needed to get
18 out of Dearborn because at this point in time I didn't
19 know where he was.
20 Q. Okay. And were you able to find either your cell phone or
21 your keys or your money?
22 A. No.
23 Q. And your Jeep still was not there?
24 A. Correct.
25 Q. Okay. And had you given the defendant permission to take

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 A. Because at that point in time I had no clue where he was,
2 and I just wanted to get out of Dearborn Heights as soon
3 as possible.
4 Q. Okay. And so what did you do at that point?
5 A. The officers took me to the police station. And my mother
6 came and picked me up, and right from the police station
7 my mother took me to emergency room.
8 Q. Okay. And which hospital did you go to?
9 A. Southshore.
10 Q. Okay. And once you got to the hospital, what happened?
11 A. They immediately took me into trauma.
12 Q. Did they take X-rays of you?
13 A. Yes, they took X-rays, CAT scans, and put the neck brace
14 on me.
15 Q. And how long did you have the neck brace on you?
16 A. Um, two to three weeks.
17 Q. Okay. And you were told by the doctor to have the neck
18 brace on?
19 A. Yes.
20 Q. Did they do any blood work?
21 A. Yes.
22 Q. And I wanna ask you about something.
23 Had you done any drugs prior to June 10th?
24 A. Yes, the day before.
25 Q. Okay. What type of drug did you do?

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 A. Cocaine and alcohol.
2 Q. Okay. And so that would have been on June 9th?
3 A. Yes.
4 Q. So were you still under the influence of those drugs in
5 the early morning of June 10th?
6 A. No, I had fell asleep and got woke back up.
7 Q. So your ability to remember, was that impaired at all?
8 A. Not at all.
9 Q. You still knew what was happening to you?
10 A. Yes.
11 Q. How long were you in the hospital?
12 A. I would say five, six hours.
13 Q. And what did the doctors give you to treat you?
14 A. They gave me pain medication and a neck brace to wear.
15 Q. What type of pain were you experiencing at this point?
16 A. Extreme pain. I have never felt that amount of pain in my
17 life.
18 Q. Where at?
19 A. Um, in my neck and in my whole face and head.
20 Q. Okay. And have you had to -- once you left the hospital
21 on that day, have you had to continue getting medical
22 treatment?
23 A. Yes.
24 Q. What type of medical treatment have you had to get?
25 A. I had -- since that episode happened, I have had five

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 seizures since then, so now I'm on seizure meds.
2 Q. Did you have seizures before this?
3 A. No. So I'm on seizure meds and I see a neurologist once a
4 month.
5 Q. Okay. And have you suffered any type of psychological
6 trauma as a result of this?
7 A. Yes.
8 Q. Okay. And do you have to see a therapist?
9 A. Yes.
10 Q. And that all stems from this incident?
11 A. Yes.
12 Q. You weren't seeing anybody before this?
13 A. No.
14 Q. All right. I wanna take you -- now once you leave the
15 hospital, I wanna go to the next day on that --
16 MS. MATHENA: Oh, actually, judge, may I
17 approach the bench for Proposed Exhibits Numbers 13 and
18 14?
19 THE COURT: Yes.
20 Q. (By Ms. Mathena, continuing): All right. Ma'am, I'm
21 gonna show you what have been pre-marked for
22 identification People's Proposed Exhibits Number 13 and
23 14. Can you take a look at these? Do you recognize
24 those?
25 A. Yes.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 A. We both were on the lease.
2 Q. I asked you whose name is on the lease?
3 A. Mine. Mine and his.
4 Q. Oh, okay. All right. So and you have never given that to
5 anybody, you never showed it to any prosecutor or police?
6 A. No.
7 Q. Who is the landlord?
8 A. His name was Ed.
9 Q. Okay. All right. So on the 9th -- the 9th is when you
10 said you used cocaine and alcohol, right?
11 A. Yes, with Mr. Davis.
12 Q. With Mr. Davis?
13 A. Yes.
14 Q. At his house?
15 A. Our house.
16 Q. Okay. Well I think you told the -- so it's your house
17 that you both leased, right?
18 A. Yes.
19 Q. Maybe I made a mistake. I'm sorry. I think I wrote down
20 here -- just one second -- that Mr. Davis moved in in
21 March. Is that what you testified to on the stand just a
22 little while ago?
23 A. February or March. Whenever our lease was.
24 Q. No, I'm not talking about your lease.
25 You said -- she asked if Mr. Davis moved into

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 your house. Do you recall that?
2 A. Yes.
3 Q. I may not be quoting the question just exactly, but
4 something to that affect, right?
5 A. Yes. Yes.
6 Q. And you said he moved into your house -- not those words,
7 but that's what you were trying to give the impression
8 that he moved into your house sometime in March. Isn't
9 that what you said?
10 A. If that's what the lease says. I don't remember.
11 Q. I'm not talking about the lease. I'm talking about what
12 you said today under oath.
13 You said that he moved in sometime in March,
14 right?
15 A. Yes.
16 Q. Are you high now?
17 A. Am I high now? No.
18 MS. MATHENA: I'm gonna object. That's
19 argumentative.
20 THE COURT: What's the legal objection?
21 MS. MATHENA: It's argumentative.
22 THE COURT: Argumentative, no. She answered no.
23 Go ahead.
24 Q. (By Ms. Brown, continuing): Okay. Did you suffer any
25 like a injury to your eye like dislocated, what do you

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 A. Yes.
2 Q. Okay. And was there anybody else around with you then
3 when you were doing the cocaine?
4 A. No.
5 Q. Okay. And you testified earlier that Mr. Davis hit you, I
6 think you said two or three times in the bedroom, right?
7 A. Yes.
8 Q. And then you said Mr. Davis followed you out in the living
9 room and hit you two times?
10 A. Yes.
11 Q. And he didn't hit you anymore, did he?
12 A. Oh, open fist he's hit me. But the closed fist was total
13 of about five times.
14 Q. Oh, I see. Okay. So you certainly would have told the
15 police when they got there that he hit you with his closed
16 fist a number of times and with his open fist a number of
17 times; is that right?
18 A. I'm sure I had. If I didn't, he has.
19 Q. Has?
20 A. Hit me before.
21 Q. I'm talking about June the 10, 2015.
22 A. Are you saying he has hit me before?
23 Q. No, my --
24 THE COURT: No, just on this day. Just on this
25 day, ma'am.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 THE WITNESS: Okay. Yes, I've told the police
2 everything what happened that day.
3 Q. (By Mr. Brown, continuing): Okay. Then my question is
4 you didn't tell the police anything about open hand,
5 hitting you open-handedly when they came and talked to
6 you, was that right? You didn't tell them, did you?
7 A. Yes, maybe. I don't remember.
8 Q. Okay. All right. You have some problem with remembering
9 just certain things that happened then or --
10 A. No, maybe it's cause I have a seizure disorder now.
11 Q. I see. And would that have anything to do with your use
12 of prior use of drugs?
13 A. Absolutely not.
14 Q. What kind of drugs did you use before?
15 MS. MATHENA: Judge, I am gonna object.
16 THE COURT: Sustained.
17 Q. (By Mr. Brown, continuing): Who lived with you and
18 Mr. Davis? Did your kids live with you and him?
19 A. No.
20 Q. Where were they?
21 A. They are with my sister.
22 Q. They weren't living with you?
23 MS. MATHENA: Objection, judge.
24 THE COURT: Sustained.
25 Q. (By Mr. Brown, continuing): Okay. You also testified --

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 what were the words you used. You said that Mr. Davis
2 said something like don't make me have to -- you gon' make
3 me have to kill you or something like that; is that right?
4 A. Yes.
5 Q. That's what you have said he said, right?
6 A. That's what he did say.
7 Q. Okay. And then what did he do to act that out?
8 A. He got very quiet, and the look in his eyes was just
9 blank, nothing.
10 Q. Yes, ma'am. I'm saying -- but my question was is there --
11 after Mr. Davis said that, did he do anything to enforce
12 that or act it out at all?
13 A. I ran to the kitchen or the bathroom sink to spit out all
14 the blood.
15 Q. Yes, ma'am.
16 A. And I haven't seen him after that.
17 Q. No, I understand.
18 MR. BROWN: And I apologize, Your Honor. I am
19 not trying to be redundant.
20 Q. (By Mr. Brown, continuing): But my question is what did
21 Mr. Davis do -- you brought in the part about kill you,
22 kill you. What did he do after he said that to try to
23 kill you?
24 A. I got away before he can do anything.
25 Q. Can you answer my question, please?

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 A. Nothing.
2 Q. Okay. And Mr. Davis -- there is nobody there like holding
3 him down or pointing a gun at him saying get back, get
4 back. He could have just kicked you, for example, right?
5 Is that right?
6 MS. MATHENA: Judge, that's speculation.
7 MR. BROWN: Oh, come on.
8 THE COURT: He could have, is that right, and he
9 didn't?
10 THE WITNESS: Yes.
11 Q. (By Mr. Brown, continuing): Yes. He didn't do anything
12 else to you after those words you say he said were said,
13 right?
14 A. Correct.
15 Q. Right. He hit you, according to you, five times, punched
16 you five times, right?
17 A. Five or six times.
18 Q. And then called your eyes -- you got two black eyes,
19 right?
20 A. Yes.
21 Q. Okay. And then he cut you -- any stitches? You never got
22 stitches, didn't get any stitches?
23 A. No.
24 Q. You get any -- did you get a prescription for something
25 like Oxycodone?

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 Q. So you were screaming for help and that's when he said,
2 "You're going to make me have to kill you"?
3 A. Yeah, because I was so loud.
4 Q. And then you shut up after that?
5 A. Yes.
6 MS. MATHENA: Nothing further.
7 THE COURT: Any recross?
8 MR. BROWN: Yes, based solely on those
9 questions.
10 **RECROSS-EXAMINATION**
11 **BY MR. BROWN:**
12 Q. You just testified about the car that you were -- you let
13 Mr. Davis use the car even though you didn't want to; is
14 that what you said essentially?
15 A. Correct. I had no say so.
16 Q. But you didn't say so. You didn't say you cannot use the
17 car, we're clear about that, right?
18 A. At that particular day, no, I did not say that.
19 Q. Well you said -- okay. I understand. You've already
20 testified.
21 I just want to make sure we're clear that you
22 let him use the car whenever he wanted to; is that fair to
23 say?
24 A. Yes.
25 Q. And he took you to work, right?

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 case. You can read right in the instructions that's not
2 the element for great bodily harm. Great bodily harm is--
3 the element at issue is the defendant's intent to cause
4 great bodily harm. Again, as the instruction says, actual
5 injury is not required, meaning I don't have to prove that
6 there was an actual injury. But there was in this case.
7 There were severe injuries in this case.
8 And you can look at the medical records. You
9 can see the injuries in the photos. And the question is
10 what did the defendant intend to do? What harm did he
11 intend to cause Ms. Shelton as he stood over her and
12 punched her with a closed fist repeatedly in her face and
13 in her head?
14 And, importantly, what was his intent? After
15 the initial beating, he doesn't let her go. When she is
16 trying to run away, he follows her. He follows her to the
17 living room and continues to assault her, continues to
18 punch her in her head. And she told you she was laying
19 there with her hands up trying to block the blows, calling
20 out for help.
21 THE COURT: Wrap it up.
22 MS. MATHENA: Thank you, judge.
23 You can infer what his intent was by his
24 actions. And, no, he didn't intend to kill her. That's
25 not the crime that's charged. The crime that's charged is

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 intent to cause her great bodily harm.
2 I agree with Mr. Brown. Use your common sense.
3 If you get back there and you think that the defendant is
4 guilty, don't look for things that don't matter and that
5 aren't there. Use your common sense.
6 Because the evidence in this case has proven
7 each element of each crime charged beyond a reasonable
8 doubt that the defendant is guilty. I ask you to find him
9 guilty of each charge.
10 Thank you.
11 THE COURT: Ladies and gentlemen, I'm about
12 ready to give those instructions to you, but before doing
13 so it's going to be about 20 minutes. Does anyone need a
14 quick restroom break before I begin?
15 All right. Seeing no hands, I'm gonna go
16 right-- yes.
17 JUROR NUMBER EIGHT: I'd like to stand up,
18 please.
19 THE COURT: Yes, please go right ahead.
20 And that's Juror Number Eight who has the issue
21 with her back. Thank you.
22 Members of the jury, the evidence and arguments
23 in the case are now finished, I will now instruct you on
24 the law. That is, I will explain the law that applies in
25 this case. Remember that you have taken an oath to return

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 a true and just verdict based only on the evidence and my
2 instructions on the law. You must not let sympathy or
3 prejudice influence your decision.
4 As jurors, you must decide what the facts of the
5 case are. This is your job and no one else's. You must
6 think about all the evidence and then decide what each
7 piece of evidence means and how important you think it is.
8 This includes whether you believe what each of the
9 witnesses said. What you decide about any fact in this
10 case is final.
11 It is my duty to instruct you on the law. You
12 must take the law as I give it to you. If a lawyer says
13 something different about the law, follow what I say. At
14 various times, I have already given you some instructions
15 about the law. You must take all of my instructions
16 together as the law you are to follow. You should not pay
17 attention to some instructions and then ignore the others.
18 To sum up, it is your job to decide what the facts of the
19 case are, to apply the law as I give it to you and in that
20 way decide the case.
21 As I mentioned before, a person who is accused
22 of a crime is presumed to be innocent. This means that
23 you must start with the presumption that the defendant is
24 innocent, and this presumption continues throughout the
25 trial and entitles the defendant to a verdict of not

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 guilty unless you are satisfied beyond a reasonable doubt
2 that he is guilty.
3 Every crime is made of parts called elements.
4 The prosecutor must prove each element of the crime beyond
5 a reasonable doubt. The defendant is not required to
6 prove his innocence or do anything. If you find the
7 prosecutor has not proven every element beyond a
8 reasonable doubt, then you must find the defendant not
9 guilty.
10 A reasonable doubt is a fair, honest doubt
11 growing out of the evidence or lack of evidence. It is
12 not merely an imaginary or possible doubt, but a doubt
13 that's based on reason and common sense. A reasonable
14 doubt is just that a doubt that is reasonable after a
15 careful and considered examination of the facts and
16 circumstances of this case.
17 Let's talk about the elements of each of the
18 crimes.
19 In Count One, the defendant is charged with the
20 crime of aggravated domestic assault. To prove this
21 charge, the prosecutor must prove each of the following
22 elements beyond a reasonable doubt.
23 First, that the defendant assaulted Shawna
24 Shelton. An assault is an attempt to commit a battery or
25 an act that would cause a reasonable person to fear or

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 apprehend an immediate battery.
2 The defendant must have intended either to
3 commit a battery, or to make Shawna Shelton reasonably
4 fear an immediate battery. At the time of an assault, the
5 defendant must have had the ability to commit a battery,
6 or must have appeared to have the ability, or must have
7 thought he had the ability.
8 Second, that at the time Shawna Shelton was a
9 resident or former resident of the same household as the
10 defendant, or was a person with whom the defendant had or
11 previously had a dating relationship.
12 A dating relationship means frequent intimate
13 association primarily characterized by the expectation of
14 affectional involvement. It's affectional involvement.
15 It does not include a casual relationship or an ordinary
16 fraternization between two individuals in a business or
17 social context.
18 And, third, that the assault caused a serious or
19 aggravating injury. A serious or aggravating injury is a
20 physical injury that requires immediate medical treatment
21 or that causes disfigurement, impairment of health or
22 impairment of a body -- I'm sorry, of a part of the body.
23 In Count Two, the defendant's charged with the
24 crime of assault with intent to do great bodily harm less
25 than murder. To prove this charge, the prosecutor must

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 prove each of the following elements beyond a reasonable
2 doubt.
3 First, that the defendant tried to physically
4 injure another person.
5 Second, that at the time of the assault the
6 defendant had the ability to cause an injury or at least
7 believed he had the ability.
8 Third, that the defendant intended to cause
9 great bodily harm.
10 Actual injury is not necessary, but if there was
11 an injury you may consider it as evidence in deciding
12 whether the defendant intended to cause great bodily harm.
13 Great bodily harm means any physical injury that
14 could seriously harm the health or function of the body.
15 In Count Three, the defendant is charged with
16 the crime of unlawful driving away a motor vehicle. To
17 prove this charge, the prosecutor must prove each of the
18 following elements beyond a reasonable doubt.
19 First, that the vehicle belonged to someone
20 else.
21 Second, that the defendant took possession of
22 the vehicle and drove or took it away.
23 Third, that these acts were done without
24 authority.
25 And, fourth, that the defendant intended to take

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 possession of the vehicle and drive or take it away. It
2 does not matter whether the defendant intended to keep the
3 vehicle.
4 The defendant is, in Count Four, charged with
5 the crime of larceny. To prove this charge, the
6 prosecutor must prove each of the following elements
7 beyond a reasonable doubt.
8 First, that the defendant took someone else's
9 property. Here, a cell phone and/or money.
10 Second, that the property was taken without
11 consent.
12 Third, that there was some movement of the
13 property. It does matter whether the defendant actually
14 kept the property or whether the property was taken off of
15 premises.
16 Fourth, that at the time the property was taken,
17 the defendant intended to permanently deprive the owner of
18 the property.
19 And, fifth, that the property had a fair-market
20 value at the time it was taken of $200 or more but less
21 than $1,000.
22 I used a term called fair-market value. The
23 test for fair -- the value of property is the reasonable
24 and fair-market value of the property at the time and in
25 the area of the offense. Fair-market value is defined as

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 the price the property would have sold for in the open
2 market at the time and in the place if the following
3 things were true: The owner wanted to sell it but did not
4 have to, the buyer wanted to buy it but did not have to,
5 and the owner had a reasonable time to find a buyer, and
6 the buyer knew what the property was worth and what it
7 could be used for.
8 With regard to these crimes, the prosecutor must
9 also prove beyond a reasonable doubt that the crime
10 occurred on or about June 10, 2016, within Wayne County.
11 June 10, 2015. Thank you.
12 Let's talk a little bit about what is and is not
13 evidence.
14 When you discuss the case and decide on your
15 verdict, you may only consider the evidence that has been
16 properly admitted in the case. Therefore, it is important
17 for you to understand what is and is not evidence.
18 Evidence includes only the sworn testimony of
19 witnesses, the exhibits admitted into evidence and
20 anything else I told you to consider as evidence. Many
21 things are not evidence and you must be careful not to
22 consider them as such. I will now describe some of the
23 things that are not evidence.
24 The fact that the defendant is charged with a
25 crime and is on trial is not evidence. Likewise, the fact

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 record.
2 A moment ago we received a note that the jury
3 has reached a unanimous verdict. What I'd like to do is
4 bring the jury out. But before doing so, we have a
5 verdict, Mr. Davis, I just ask you to -- obviously this is
6 an important issue for you. Just no reaction for whatever
7 the verdict is. All right?
8 THE DEFENDANT: Yes.
9 THE COURT: All right.
10 (The jury entered the courtroom at 2:45 P.M.)
11 THE COURT: Good afternoon, ladies and
12 gentlemen.
13 I understand that you have reached a unanimous
14 verdict. What I am gonna do now is I am gonna turn it
15 over now to the court clerk to receive your verdict.
16 THE CLERK: Who is your foreperson?
17 JUROR NUMBER ELEVEN: I am.
18 THE CLERK: State your name for the record.
19 JUROR NUMBER ELEVEN: Theresa Madden.
20 THE COURT: Have you reached a unanimous
21 verdict?
22 JUROR NUMBER ELEVEN: Yes.
23 THE CLERK: As to Count One, aggravated domestic
24 assault, what is your verdict?
25 JUROR NUMBER ELEVEN: Guilty.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 THE CLERK: As to Count Two, assault with intent
2 to do great bodily harm.
3 JUROR NUMBER ELEVEN: Guilty.
4 THE CLERK: As to Count Three, unlawful driving
5 away an automobile.
6 JUROR NUMBER ELEVEN: Not guilty.
7 THE CLERK: As to Count Four, larceny between
8 $200 and $1,000?
9 JUROR NUMBER ELEVEN: Not guilty.
10 THE CLERK: Members of the jury, please stand
11 and raise your right hand.
12 Listen to your verdicts as recorded by the
13 Court. You say upon your oath that you find the defendant
14 Joel Davis guilty of Count One, aggravated domestic
15 assault; guilty of Count Two, assault with intent to do
16 great bodily harm; not guilty as to Count Three, unlawful
17 driving away an automobile; and not guilty as to Count
18 Four, larceny between $200 and $1,000, so say you, Madam
19 Foreperson, so say all members of the jury?
20 Jurors, you may respond.
21 THE JURORS: Yes.
22 THE CLERK: Thank you. You may be seated.
23 THE COURT: Okay. You may be seated.
24 MR. BROWN: I'd like to have the jury pulled,
25 Your Honor. Thank you.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 THE COURT: All right. If you could poll the
2 jury, please.
3 THE CLERK: Juror Number One, was that and is
4 that your verdict?
5 JUROR NUMBER ONE: Yes.
6 THE CLERK: Juror Number Three, was that and is
7 that your verdict?
8 JUROR NUMBER THREE: Yes.
9 THE CLERK: Juror Number Four, was that and is
10 that your verdict?
11 JUROR NUMBER FOUR: Yes.
12 THE CLERK: Number Five, is that and was that
13 your verdict?
14 JUROR NUMBER FIVE: Yes.
15 THE CLERK: Number six, was that and is that
16 your verdict?
17 JUROR NUMBER SIX: Yes.
18 THE CLERK: Number seven, was that and is that
19 your verdict?
20 JUROR NUMBER SEVEN: Yes.
21 THE CLERK: Number nine, was that and is that
22 your verdict?
23 JUROR NUMBER NINE: Yes.
24 THE COURT: I think you missed eight.
25 THE CLERK: Did I miss eight?

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 THE COURT: She's standing.
2 THE CLERK: Sorry. Was that and is that your
3 verdict, number eight?
4 JUROR NUMBER EIGHT: Yes.
5 THE CLERK: Number nine, I got you already.
6 JUROR NUMBER NINE: Yes.
7 THE CLERK: Number eleven, was that and is that
8 your verdict?
9 JUROR NUMBER ELEVEN: Yes.
10 THE CLERK: Number twelve, was that and is that
11 your verdict?
12 JUROR NUMBER TWELVE: Yes.
13 THE CLERK: Number thirteen, was that and is
14 that your verdict?
15 JUROR NUMBER THIRTEEN: Yes.
16 THE CLERK: And, number fourteen, was that and
17 is that your verdict?
18 JUROR NUMBER FOURTEEN: Yes.
19 THE CLERK: Thank you.
20 THE COURT: All right. Ladies and gentlemen,
21 let me first say thank you very much for your service.
22 I'd ask you all to take a step inside the jury
23 room and I will be with you in just a moment.
24 (The jury was discharged at 2:48 P.M.)
25 THE COURT: Sentencing date?

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 great concern. Further, the fact that the criminal
2 justice system, it appears as though, worked hard to
3 provide you with opportunities to avoid prison, to avoid--
4 to get your life back on track, and at each point based on
5 at least your criminal history I have to conclude that you
6 have never taken advantage of those opportunities.
7 Your propensity toward violence, technically
8 toward apparently women, is also self-evident in the
9 Presentence Report.
10 And also although certainly you enjoy the
11 presumption of innocence on the case out of Saginaw, it is
12 noteworthy that I at least gave you an opportunity,
13 although you were in custody at the time, I gave you a
14 tether. And you're currently in custody now because I
15 rescinded that opportunity after you were picked up in
16 Saginaw on new criminal charges.
17 Again, you enjoy a presumption of innocence, but
18 it is noteworthy that even in this -- before this Court,
19 this Court has given you opportunities which I have had to
20 rescind based on your conduct or alleged conduct.
21 And then, finally, I would note that there was
22 testimony during trial which I agree with, with regard to
23 the severity of the injuries sustained by the victim.
24 There was testimony from an officer that this was
25 noteworthy in his mind because it was the worst domestic

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 he had ever seen. I can tell you there have been cases
2 where I've seen worse, but never where the victim lived.
3 So I do find that the severity of the beating,
4 as well as all the other factors are all things that are
5 not adequately reflected in the guidelines that are
6 properly considered by this Court in fashioning a
7 reasonable and proportional sentence.
8 Here, the guidelines, though not required to be
9 followed, are 29 to 57 months. I do find that they do not
10 adequately reflect the severity and your prior criminal
11 history as well as the other factors I've considered.
12 So, therefore, in terms of the assault with
13 intent to do great bodily harm less than murder --
14 actually, I would note one more thing that hasn't been
15 placed on the record. Obviously, you have a lengthy
16 criminal history, but for reasons that still remain
17 unclear to me you were never habitualized for that. So
18 had you been properly habitualized by the prosecution, you
19 would be looking at a guide -- a minimum guideline range
20 of substantially more than what you're looking at today.
21 Maybe that's the case because so many of your offenses
22 were from out of state or maybe not. I don't know. But
23 it's noteworthy at least for part of this record, not in
24 fashioning a reasonable record but instead just so it's
25 clear from any court who would look at the sentence that

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 the defendant would be looking at a substantially higher
2 guideline range had the prosecution filed the habitual
3 offender notice. Again, I'm not considering that as a
4 part of my sentence, but I think it is at least noteworthy
5 why I'm not sentencing him as a fourth habitual offender.
6 Having said that, in terms of your conviction
7 for assault with intent to do great bodily harm less than
8 murder, I will sentence you to 69 months to 10 years in
9 the Michigan Department of Corrections.
10 With regard to the domestic violence second
11 offense, the statutory max on that offense is?
12 MS. MATHENA: Five years, judge.
13 THE COURT: Five years.
14 MS. MATHENA: On Count One?
15 THE COURT: Yes. Yes.
16 MS. MATHENA: Yes, five.
17 THE COURT: I will sentence you to one to five
18 years on the domestic violence second offense.
19 Those convictions will run concurrent, meaning
20 at the same time with each other.
21 MR. BROWN: Your Honor, I don't mean to
22 interrupt you.
23 THE COURT: Yes.
24 MR. BROWN: You said 69 or did you say 66?
25 THE COURT: Sixty-nine.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1 MR. BROWN: Two-thirds of two-thirds? I think
2 the maximum you could do on GBH is 67.66 or 66.6. So that
3 would be two-thirds I think.
4 THE COURT: Let me rephrase or correct that.
5 Sixty-five months to 10 years, and one to five
6 for the domestic violence second offense. These offenses
7 will run concurrent with each other.
8 You do have certain appellate rights. Those
9 appellate rights include --
10 THE DEFENDANT: Yes, sir, I'm gon' appeal.
11 THE COURT: -- if you choose to do so, file an
12 appeal, that appeal is of right since you exercised your
13 right to a jury trial. You may receive a court-appointed
14 attorney, if eligible, but you'd need to file any appeal
15 within 42 days.
16 THE DEFENDANT: I am gonna turn it in right now.
17 THE COURT: The form in front of you that
18 hopefully you have signed simply identifies that you
19 understand your appeal rights.
20 MR. BROWN: For the record, Mr. Davis has signed
21 his notice of appellate rights. He's executed same,
22 returned to the court. He has a copy of the form which he
23 can utilize to appeal in his position right now.
24 THE COURT: All right.
25 THE DEFENDANT: Thank you.

RECEIVED by MSC 12/9/2020 6:01:55 PM

1st copy – Corrections
2nd copy – Corrections (for return
3rd copy – Michigan State Police CJIC
4th copy – Defendant
5th copy – Prosecutor
6th copy - Cashier

Approved, SCAO Original – Court

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS ☐ Amended	CASE NO. 15-005481-01-FH

ORI MI – 821095J Court Address 1441 St. Antoine, Detroit, MI 48226 Courtroom 401 Court Telephone No. (313) 224-2481
Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant name, address, and telephone no.
JOEL EUSEVIO DAVIS
Alias(es) - JOEL PACO DAVIS
24540 HAAS, DEARBORN HTS, MI 48127

CTN/TCN	SID	DOB
82-15711764-01	MI-4881048J	08-08-1979

Prosecuting attorney name	Bar no.	Defendant attorney name	Bar no.
Tara Mathena	78685	Mark Brown	39562

THE COURT FINDS:

1. The defendant was found guilty on **02-17-2016** of the crime(s) stated below:

	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE (S) MCL citation/PACC Code
Count	Pleas*	Court	Jury			
1			G		DV – AGGRAVATED 2ND	750.81A3
2			G		AGBH	750.84

*For plea: insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, For dismissal; insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).
☐ 3. HIV testing and sex offender registration is completed.
☐ 4. The defendant has been fingerprinted according to MCL 28.243.

Defendant's driver license number

IT IS ORDERED:

☐ 5. Probation is revoked.

6.Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.

7.Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM		DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.		Mos.	Days	
1	03-09-2016	1	-	-	5	-		-	174	
2	03-09-2016	-	65	-	10 ✓	-			174	

☐ 8. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)
☐ each other. ☐ case numbers _____

9. Defendant shall pay as follows:

State Minimum	Crime Victim	Restitution	Court Costs	Attorney Fees	Fine	Other Costs	Total
$ 68.00 x 2	$ 130.00	$	$ 1,300.00	$ 400.00	$	$ 60.00 DNA	$ 2,026.00

The due date for payment is **at sentencing**. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

10. The concealed weapon board shall suspend for _____ days permanently revoke the concealed weapon license, permit number _____ issued by _____ County.

☐11. The defendant is subject to lifetime monitoring pursuant to MCL 750.520n.

12. **Court recommendation:**

03-09-2016
Date

Judge Thomas Cameron

54636
Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766

Order

Michigan Supreme Court
Lansing, Michigan

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

RECEIVED by MSC 12/9/2020 6:01:55 PM

March 22, 2019

156406

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 156406
COA: 332081
Wayne CC: 15-005481-FH

JOEL EUSEVIO DAVIS,
Defendant-Appellee.
_____/

On order of the Court, leave to appeal having been granted, and the briefs and oral arguments of the parties having been considered by the Court, we VACATE in part the July 13, 2017 judgment of the Court of Appeals. On appeal to the Court of Appeals, defendant argued that his convictions for both assault with intent to do great bodily harm (AWIGBH), MCL 750.84(1)(a),[1] and aggravated domestic assault, MCL 750.81a(3),[2] violated his right to be free from multiple punishments under double-jeopardy principles. US Const, Am V; Const 1963, art 1, § 15. The Court of Appeals reframed this double-jeopardy argument as an issue of "mutually exclusive" verdicts, specifically a situation "where a guilty verdict on one count necessarily excludes a finding of guilt on another . . . ." *People v Davis*, 320 Mich App 484, 493 (2017), quoting *United States v Randolph*, 794 F3d 602, 610-611 (CA 6, 2015) (quotation marks omitted). See also *United States v Powell*, 469 US 57, 69 n 8 (1984). The Court of Appeals noted that the statutory language of AWIGBH requires a defendant to commit assault *with* the specific intent to do great bodily harm, whereas the statutory language of aggravated domestic assault requires a defendant to commit assault *without* the intent to commit great bodily harm. *Davis*, 320 Mich App at 490. The Court of Appeals reasoned that these contradictory provisions rendered the verdicts mutually exclusive and, on that basis,

[1] To be found guilty of AWIGBH, a person must "[a]ssault[] another person with intent to do great bodily harm, less than the crime of murder." MCL 750.84(1)(a).

[2] To be found guilty of aggravated domestic assault, a person must, *inter alia*, assault an individual "without intending . . . to inflict great bodily harm . . . ." MCL 750.81a(2).

RECEIVED by MSC 12/9/2020 6:01:55 PM

vacated defendant's aggravated domestic assault conviction. *Id*. at 496. In doing so, the Court of Appeals erred.

Regardless of whether this state's jurisprudence recognizes the principle of mutually exclusive verdicts, this case does not present that issue. In this case, the jury was instructed that to convict defendant of AWIGBH, it must find that defendant acted "with intent to do great bodily harm, less than the crime of murder." See MCL 750.84(1)(a). However, with respect to aggravated domestic assault, the jury was *not* instructed that it must find that defendant acted *without* the intent to inflict great bodily harm. See MCL 750.81a(3); *People v Doss*, 406 Mich 90, 99 (1979) ("While the absence of malice is fundamental to manslaughter in a general definitional sense, it is not an actual element of the crime itself which the people must establish beyond a reasonable doubt."). Since, with respect to the aggravated domestic assault conviction, the jury never found that defendant acted without the intent to inflict great bodily harm, a guilty verdict for that offense was not mutually exclusive to defendant's guilty verdict for AWIGBH, where the jury affirmatively found that defendant acted with intent to do great bodily harm. Thus, the Court of Appeals erred by relying on the principle of mutually exclusive verdicts to vacate defendant's aggravated domestic assault conviction. We thus VACATE that part of the Court of Appeals judgment relevant to that finding.

Because the Court of Appeals erroneously decided this case on the basis of mutually exclusive verdicts, the Court did not address the merits of defendant's double-jeopardy argument. *Davis*, 320 Mich App at 489 (finding that "double jeopardy is not the proper initial focus"). Accordingly, we REMAND this case to the Court of Appeals for reconsideration of the parties' arguments in light of *People v Miller*, 498 Mich 13 (2015). We also direct the Court of Appeals to determine and apply the appropriate standard of review to this double-jeopardy challenge because the applicable standard of review was not explicitly addressed by the Court of Appeals in its July 13, 2017 judgment.

We do not retain jurisdiction.

a0319

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 22, 2019

Clerk

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

RECEIVED by MSC 12/9/2020 6:01:55 PM

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOEL EUSEVIO DAVIS,

Defendant-Appellant.

UNPUBLISHED
November 12, 2019

No. 332081
Wayne Circuit Court
LC No. 15-005481-01-FH

ON REMAND

Before: GLEICHER, P.J., and M. J. KELLY and SHAPIRO, JJ.

PER CURIAM.

In *People v Davis*, 320 Mich App 484; 905 NW2d 482 (2017) (*Davis I*), we vacated defendant's convictions for aggravated domestic assault (second offense), MCL 750.81a(3), and assault with intent to do great bodily harm less than murder (AWIGBH), MCL 750.84, after determining that the offenses were mutually exclusive. Our Supreme Court vacated that portion of *Davis I*, reasoning:

> Regardless of whether this state's jurisprudence recognizes the principle of mutually exclusive verdicts, this case does not present that issue. In this case, the jury was instructed that to convict defendant of AWIGBH, it must find that defendant acted "with intent to do great bodily harm, less than the crime of murder." See MCL 750.84(1)(a). However, with respect to aggravated domestic assault, the jury was not instructed that it must find that defendant acted without the intent to inflict great bodily harm. See MCL 750.81a(3); *People v Doss*, 406 Mich 90, 99 (1979) ("While the absence of malice is fundamental to manslaughter in a general definitional sense, it is not an actual element of the crime itself which the people must establish beyond a reasonable doubt."). Since, with respect to the aggravated domestic assault conviction, the jury never found that defendant acted without the intent to inflict great bodily harm, a guilty verdict for that offense was not mutually exclusive to defendant's guilty verdict for AWIGBH, where the jury affirmatively found that defendant acted with intent to do great bodily harm.

RECEIVED by MSC 12/9/2020 6:01:55 PM

> Thus, the Court of Appeals erred by relying on the principle of mutually exclusive verdicts to vacate defendant's aggravated domestic assault conviction. [*People v Davis*, ___ Mich ___; ___ NW2d ___ (Docket No. 156406, entered March 22, 2019) (*Davis II*).]

On remand, the Supreme Court directed us to consider defendant's challenge to his convictions and sentences on double-jeopardy grounds, taking into consideration *People v Miller*, 498 Mich 13; 869 NW2d 204 (2015), and explicitly addressing the proper standard of review.

Based on *Miller* and the legislative history of Michigan's assault statutes, we now hold that defendant's convictions did not violate double-jeopardy principles and affirm.

I

In 2015, defendant physically assaulted his girlfriend, causing significant facial injuries. *Davis I*, 320 Mich App at 486-487. A jury convicted defendant of aggravated domestic assault (second offense), MCL 750.81a(3), and AWIGBH, MCL 750.84(1)(a). *Davis I*, 320 Mich App at 486. The trial court sentenced defendant to 1 to 5 years' imprisonment for aggravated domestic assault, and 65 months to 10 years' imprisonment for AWIGBH. In *Davis I*, 320 Mich App at 487-489, we rejected defendant's challenge to the admission of certain evidence against him. We did not address defendant's second issue as presented by him: that his convictions violated his right to be free from multiple punishments for the same offense under double-jeopardy principles. We now do so relying upon *Miller*, 498 Mich 13.

II

We first note that defendant failed to preserve this issue by raising a double-jeopardy challenge in the trial court. Our review of unpreserved constitutional issues is limited to plain error affecting defendant's substantial rights. *People v Carines*, 463 Mich 750, 763; 597 NW2d 130 (1999). "Reversal is warranted only if the error resulted in a conviction despite the defendant's actual innocence, or if the error seriously affected the fairness, integrity, or public reputation of judicial proceedings, independent of the defendant's innocence." *People v Ackah-Essien*, 311 Mich App 13, 30-31; 874 NW2d 172 (2015).

III

The double-jeopardy provisions of the United States and Michigan Constitutions[1] protect individuals from being twice placed in jeopardy for the same offense and "protect[] against multiple punishments for the same offense." *Miller*, 498 Mich at 17 (cleaned up).[2]

---

[1] US Const, Am V; Const 1963, art 1, § 15.

[2] This opinion uses the parenthetical (cleaned up) to improve readability without altering the substance of the quotation. The parenthetical indicates that nonsubstantive clutter such as

RECEIVED by MSC 12/9/2020 6:01:55 PM

> The multiple punishments strand of double jeopardy is designed to ensure that courts confine their sentences to the limits established by the Legislature and therefore acts as a restraint on the prosecutor and the Courts. The multiple punishments strand is not violated where a legislature specifically authorizes cumulative punishment under two statutes. Conversely, where the Legislature expresses a clear intention in the plain language of a statute to prohibit multiple punishments, it will be a violation of the multiple punishments strand for a trial court to cumulatively punish a defendant for both offenses in a single trial. Thus, the question of what punishments are constitutionally permissible is not different from the question of what punishments the Legislative Branch intended to be imposed. [*Id*. at 17-18 (cleaned up).]

"The Legislature, however, does not always clearly indicate its intent with regard to the permissibility of multiple punishments." *Id*. at 19. Where legislative intent is not clear, Michigan courts employ the "abstract legal elements" test of *People v Ream*, 481 Mich 223; 750 NW2d 536 (2008). *Miller*, 498 Mich at 19. Under this test, "two offenses will only be considered the 'same offense' where it is impossible to commit the greater offense without also committing the lesser offense." *Id*.

At issue in *Miller* was whether separate convictions arising from the same conduct for operating while intoxicated (OWI), MCL 257.625(1), and operating while intoxicated causing serious impairment of the body function of another person (OWI-injury), MCL 257.625(5), violated the defendant's right to be free from double jeopardy. *Miller*, 489 Mich at 15. The Supreme Court determined that the Legislature's intent with respect to these statutes could be derived without reference to the *Ream* test. MCL 257.625(1) and (5), when viewed in isolation, did not demonstrate any legislative intent regarding the authorization of cumulative punishment. *Miller*, 498 Mich at 22-23. But, the Court explained, "we do not quarantine the text when interpreting statutes. Instead, we must examine the statutory language as a whole to determine the Legislature's intent." *Id*. at 23. MCL 257.625(7)(d) provides that punishment under MCL 257.625(7) does not preclude punishment for a violation of MCL 257.625(4) or (5). *Miller*, 498 Mich at 23-24. This specific authorization permitting multiple punishments only when subsection (7) and either subsection (4) or subsection (5) are involved, means that "the Legislature did *not* intend to permit multiple punishments for OWI and OWI-injury offenses arising from the same incident"; the statute does not include a like provision permitting multiple punishments for violations of subsections (1) and (5). *Id*. at 24. "The fact that the Legislature expressly authorized multiple punishments for Subsection (5) and a subsection other than Subsection (1) demonstrates that the Legislature did not intend to permit multiple punishments for violations of Subsections (1) and (5)." *Id*. Having determined that the Legislature clearly did not intend for one to be punished under both MCL 257.625(1) and (5) for the same conduct, the Court did not need to resort to the *Ream* test to find a double-jeopardy violation. *Miller*, 498 Mich at 24-27.

---

brackets, alterations, internal quotation marks, and unimportant citations have been omitted from the quotation. See Metzler, *Cleaning Up Quotations*, 18 J App Pract & Process 143 (2017).

RECEIVED by MSC 12/9/2020 6:01:55 PM

IV

The reasoning of *Miller* dictates that a defendant may be convicted of both AWIGBH and aggravated domestic assault arising from the same conduct. "[T]he statutory language evinces a legislative intent with regard to the permissibility of multiple punishments" and we may not resort to *Ream*'s "abstract legal elements" test. *Id*. at 19.

MCL 750.84(1)(a) makes it is a 10-year felony to "[a]ssault[] another person with intent to do great bodily harm, less than the crime of murder." MCL 750.84(3) provides that "[t]his section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same conduct as the violation of this section." This legislative statement leaves no room for dispute. The Legislature has made it clear that one may be punished under MCL 750.84, and also for any other violation of law arising out of the same conduct. As such, there is no double-jeopardy violation.

Defendant contends, however, that the language of MCL 750.81a and MCL 750.84(1) conflict, thereby demonstrating the Legislature's intent that one cannot be convicted of both offenses for the same conduct, despite the command of MCL 750.84(3). Defendant relies on our statement in *Davis I*, 320 Mich App at 490 (cleaned up), that the two statutes are "mutually exclusive from a legislative standpoint. One requires the defendant to act with the specific intent to do great bodily harm less than murder; the other is committed without intent to do great bodily harm less than murder." Defendant asks this Court to imply that the legislative command stated in MCL 750.84(3) does not apply when the other offense is a charge under MCL 750.81a. We cannot grant this request.

Our ultimate task is to derive our Legislature's intent. *People v Rea*, 500 Mich 422, 427; 902 NW2d 362 (2017). The most reliable evidence of our Legislature's intent is the plain language of the statute. *Id*. Every word, phrase, and clause must be given effect, and this Court must "avoid an interpretation that would render any part of the statute surplusage or nugatory." *Id*. at 427-428 (cleaned up). MCL 750.84(3) plainly and unambiguously provides that defendant's AWIGBH conviction does not preclude a conviction of aggravated domestic assault. The only way to reach the result advocated by defendant is to ignore MCL 750.84(3), or to at least rewrite the language, "any other violation of law" to except a conviction of aggravated domestic assault. We may not rewrite the statute in this manner. *McDonald v Farm Bureau Ins Co*, 481 Mich 191, 199; 747 NW2d 811 (2008).

Moreover, the history of the relevant statutes reveals that our Legislature meant what it said in MCL 750.84(3), even when the crimes at issue are aggravated domestic assault and AWIGBH. By way of 1931 PA 328, our Legislature codified 10 forms of assault. MCL 750.81 made all assaults not otherwise defined a misdemeanor.[3] Nine remaining forms of assault were

[3] "Any person who shall be convicted of an assault or an assault and battery where no other punishment is prescribed shall be guilty of a misdemeanor." MCL 750.81, as enacted by 1931 PA 328.

RECEIVED by MSC 12/9/2020 6:01:55 PM

then enumerated, including AWIGBH, which was found in MCL 750.84. As enacted by 1931 PA 328, MCL 750.84 stated, in its entirety, "Any person who shall assault another with intent to do great bodily harm, less than the crime of murder, shall be guilty of a felony punishable by imprisonment in the state prison not more than 10 years, or by fine of not more than 5,000 dollars." Eight other forms of assault were listed, none of which addressed domestic assaults.

Through 1939 PA 237, our Legislature enacted MCL 750.81a. As originally enacted, the statute deemed an assault causing serious or aggravated injury as a misdemeanor:

> Any person who shall assault another without any weapon and inflict serious or aggravated injury upon the person of another without intending to commit the crime of murder, and without intending to inflict great bodily harm less than the crime of murder, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail or the state prison for a period of not more than 1 year, or fine of $500.00, or both. [MCL 750.81a, as enacted by 1939 PA 237.]

The Legislature's intent in first enacting MCL 750.81a was to define an additional form of assault. This form of assault would exist where one, without a weapon, caused serious injury, but did so without intending to kill or inflict great bodily harm on the victim. It was originally a "gap-filler." It appears that when MCL 750.81a was first enacted, the Legislature did not envision a situation where one could be guilty of both AWIGBH and the type of assault delineated by MCL 750.81a. Rather, MCL 750.81a and MCL 750.84 described different types of assaults.

Our Legislature amended MCL 750.81a through 1994 PA 65. The form of assault generally described by the statute remained, although it was reworded for clarity, and the amount of the potential fine was increased. Significant to the present case, our Legislature also added two subsections addressing domestic assaults:

> (2) Except as provided in subsection (3), an individual who assaults his or her spouse or former spouse, an individual with whom he or she has a child in common, or a resident or former resident of his or her household, without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.
>
> (3) An individual who assaults his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, in violation of subsection (2), and who has 1 or more previous convictions for assaulting and battering his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, in violation of this section or [MCL 750.81, MCL 750.82, MCL 750.83, MCL 750.84, or MCL 750.86] or a local ordinance substantially corresponding to [MCL 750.81], is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,500.00, or both. [MCL 750.81a(2) and (3), as enacted by 1994 PA 65.]

RECEIVED by MSC 12/9/2020 6:01:55 PM

1994 PA 65 was tie-barred to 1994 PA 64. 1994 PA 64 clarified the language of MCL 750.81 and added domestic assault provisions. Those provisions stated that domestic assaults that did not cause serious or aggravated injuries would be punishable as misdemeanors on the first two occasions, and as a felony on the third. MCL 750.81(1)-(4), as enacted by 1994 PA 64. 1994 PA 64 and 1994 PA 65 essentially provided sentence enhancements for assaults committed in the context of a domestic relationship. See *People v Wilson*, 265 Mich App 386, 392-394; 695 NW2d 351 (2005). But because the underlying forms of assault were those criminalized by MCL 750.81 and MCL 750.81a, it is possible that the Legislature did not foresee that a defendant could be convicted of both AWIGBH and domestic assault under MCL 750.81 or aggravated domestic assault under MCL 750.81a. In that regard, it is important to note that MCL 750.84 was not amended at the time these domestic assault provisions were created.

The next set of relevant legislative amendments—2012 PA 366 and 2012 PA 367—took effect on April 1, 2013. 2012 PA 366 amended MCL 750.81 and MCL 750.81a, increasing the penalties for those convicted of multiple domestic assaults. 2012 PA 367 substantially rewrote MCL 750.84 as follows:

> (1) A person who does either of the following is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $5,000.00, or both:
>
> (a) Assaults another person with intent to do great bodily harm, less than the crime of murder.
>
> (b) Assaults another person by strangulation or suffocation.
>
> * * *
>
> (3) *This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same conduct as the violation of this section*. [Emphasis added.]

This history makes clear that when our Legislature enacted 2012 PA 366 and 2012 PA 367, its intent was to increase the penalties for domestic assaults and to clarify that one who commits AWIGBH can also be prosecuted under the domestic assault statutes. "The Legislature is presumed to know of and legislate in harmony with existing laws." *People v Pace*, 311 Mich App 1, 9; 874 NW2d 164 (2015) (cleaned up). That the Legislature was aware of the domestic assault statutes when it amended MCL 750.84—and specifically, when it added MCL 750.84(3)—is all the more clear when one knows that the domestic assault statutes were amended effective the same day the Legislature amended MCL 750.84. Had the Legislature intended that an AWIGBH conviction would preclude a conviction under MCL 750.81a, it could have said so. Not doing so appears to be a conscious choice. Because the Legislature's intent

RECEIVED by MSC 12/9/2020 6:01:55 PM

was to permit punishment for both AWIGBH and aggravated domestic assault arising out of the same conduct, there can be no double-jeopardy violation.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

RECEIVED by MSC 12/9/2020 6:01:55 PM

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOEL EUSEVIO DAVIS,

Defendant-Appellant.

UNPUBLISHED
November 12, 2019

No. 332081
Wayne Circuit Court
LC No. 15-005481-01-FH

ON REMAND

Before: GLEICHER, P.J., and M. J. KELLY and SHAPIRO, JJ.

SHAPIRO, J. (*dissenting*).

I respectfully dissent. In our initial opinion, we held that the crimes of aggravated domestic assault and assault with intent to do great bodily harm (AWIGBH) are mutually exclusive with one another considering the statutory language defining each crime. *People v Davis*, 320 Mich App 484, 494-496; 905 NW2d 482 (2017). The Supreme Court reversed, finding that because the jury was not instructed on the negative element for aggravated domestic assault, i.e., "that defendant acted *without* the intent to inflict great bodily harm," the verdicts were not mutually exclusive. *People v Davis*, 503 Mich 984 (2019). In other words, because the jury was not instructed on the inconsistent nature of the two offenses, it did not render inconsistent findings.

In my view, our prior opinion erred by defining the problem as one of mutually exclusive *verdicts* instead of a mutually exclusive *judgments*. The Supreme Court reversed because verdicts cannot be mutually exclusive when the jury is not instructed on the element that creates the inconsistency. I respectfully suggest, however, that while whether or not a jury is instructed on a negative element is relevant to a claim of mutually exclusive verdicts, it is irrelevant to the question whether the court violates a defendant's due process rights by entering a judgment for two crimes that by their terms cannot exist simultaneously. The jury is not aware that the crimes are by their plain language mutually exclusive, but the court is and, in my view, must therefore decline to enter a judgment of conviction for both offenses. That the offenses are mutually exclusive is apparent on the face of the statutes. AWIGBH occurs when the defendant either

RECEIVED by MSC 12/9/2020 6:01:55 PM

assaults a person by strangulation or suffocation (neither of which apply here), or when the defendant "[a]ssaults another person *with intent to do great bodily harm* . . . ." MCL 750.84(1)(a) (emphasis added). In contrast, a defendant commits aggravated domestic assault when he inflicts serious or aggravated injury "*without intending to* . . . *inflict great bodily harm* . . . ." MCL 750.81a(2) (emphasis added).

The majority notes that MCL 750.84(3) provides that "[t]his section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same conduct as the violation of this section." I agree; a conviction for AWIGBH does not immunize a defendant against convictions of other crimes arising out of the assault. However, the question is not whether as a general matter a defendant may be convicted of other crimes arising out of the assault, but whether the judicial system may adjudge a defendant guilty of two crimes when the statutes defining them make clear that factually only one can exist at a time, i.e., either a defendant has the intent to do great bodily harm or not.[1]

In a recent case, the Supreme Court acknowledged that relying on acquitted conduct to increase a defendant's sentence " 'mak[es] no sense as a matter of law or logic,' " and is "a 'perver[sion] of our system of justice,' as well as 'bizarre' and 'reminiscent of *Alice in Wonderland*.' " *People v Beck*, ___ Mich ___, ___; ___ NW2d ___ (2019) (Docket No. 152934); slip op at 20 (citations omitted; first alteration added). I would conclude that this characterization applies equally to a court's entry of judgment of guilt for two offenses that by their terms cannot exist simultaneously.

/s/ Douglas B. Shapiro

[1] The majority undertakes a thoughtful analysis of legislative intent reviewing the interplay of various amendments. However, none of the amendments speaks to the specific contradictory language in the offenses before us.

Order

RECEIVED by MSC 12/9/2020 6:01:55 PM

Michigan Supreme Court
Lansing, Michigan

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

June 5, 2020

160775

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 160775
COA: 332081
Wayne CC: 15-005481-FH

JOEL EUSEVIO DAVIS,
Defendant-Appellant.
_____/

On order of the Court, the application for leave to appeal the November 12, 2019 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order addressing: (1) whether the defendant's convictions under MCL 750.81a(3) and MCL 750.84 violate constitutional prohibitions against double jeopardy, see *People v Miller*, 498 Mich 13 (2015); and (2) if so, whether the defendant is entitled to relief. See *People v Carines*, 460 Mich 750, 763 (1999). In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellee shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

We direct the Clerk to schedule the oral argument in this case for the same future session of the Court when it will hear oral argument in *People v Wafer* (Docket No. 153828).

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.

SEAL OF THE MICHIGAN SUPREME COURT · LANSING · JUSTITIAM · JUSTITIE · POSITI

b0602

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 5, 2020

Clerk