

STATE OF MICHIGAN
IN THE SUPREME COURT

People of the State of Michigan,
Plaintiff - Appellee

-v-

No. 160968

Kellie Nichole Stock, #260350,
Defendant - Appellant

Court of Appeals No. 340541

APPELLANT'S REPLY TO APPELLEE'S
BRIEF IN ANSWER TO APPELLANT'S
APPLICATION FOR LEAVE TO APPEAL



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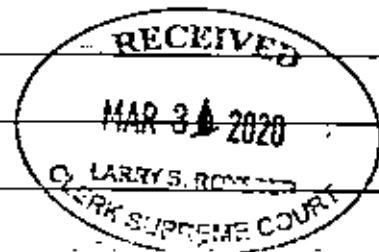
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STATE OF MICHIGAN
IN THE SUPREME COURT



PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff - Appellee,

v-

No. 160968

KELLIE NICHOLE STOCK,
Defendant - Appellant

Court of Appeals No. 340541
Circuit Court No. 17-003509-01-FC

DEFENDANT APPELLANT'S REPLY TO
PLAINTIFF-APPELLEE'S ANSWER OPPOSING
THE DEFENDANT-APPELLANT'S APPLICATION
FOR LEAVE TO APPEAL

1) The Defendant's application for leave to
appeal relies on the same arguments she
made in the Michigan Court of Appeals

Reply. To the extent that the issues are
the same defendant has further developed
her argument after and in some part
because of the Court of Appeals decision.

2) The People's brief to the Michigan Court of Appeals adequately addresses these issues, and is hereby incorporated in this answer.

Reply: a) The People's brief does not adequately address these issues because:

a) The defendant's Reply Brief in the Court of Appeals rebuts some of the arguments in the People's brief

b) The Defendant's Application for Leave to Appeal addresses both the People's Brief on Appeal arguments and the decision of the Court of Appeals.

3) The Michigan Court of Appeals did not clearly err in rejecting the Defendant's arguments and affirming her convictions. ②

② MCR 7.302(B)(5)

REPLY: MCR 7.302(B) says: A document that is electronically filed may be served electronically on registered users of the e-filing system at their registered e-mail address. There is no subsection (5). The MCR cited is totally irrelevant.

Appeals did err in affirming defendants' convictions because the convictions violate Michigan Statutory law and the Michigan and United States Constitution as addressed in both the Defendants' Brief on Appeal to the Michigan Court of Appeals and in Defendants' Application for Leave to Appeal to the Supreme Court of Michigan.

4) The Defendants' application for leave to appeal does not demonstrate any of the other grounds for granting leave to appeal³
 ③ MCR 7.302 (B) (1)-(3)

Reply: There is no MCR 7.302 (B) (1)-(3)

In any case, the application demonstrates

A) The issue raises a serious doubt about the legality of a law passed by the Legislature, specifically MCL 257.625 (4), (5) and (6), and MCL 257.626

B) The issue raises a legal principle that is very important to Michigan law. Specifically, the metabolic issue and the issue of unmarked law enforcement vehicles issuing orders for vehicles to stop. Clearly, when the Legislature mandated that a vehicle

be adequately marked as a law enforcement vehicle, it did not intend for unmarked vehicles to stop citizens. (MCL 257.602) If the law were to be construed to include unmarked vehicles to pull over citizens then citizens would be under an obligation to pull over for any vehicle. Detroit Police Department policy requires a vehicle to have at least writing in particle identifying it as a Detroit Police official vehicle to stop a citizen vehicle. Michigan law intends for the vehicle to be marked. To affirm defendant's conviction would be to allow the statute to require citizens to stop not knowing who is asking them to stop which is very dangerous.

a) The Court of Appeals decision is clearly wrong and will cause material injustice. The verdict was based on biased testimony of officer Donegan and false evidence which purported to be cocaine but was a metabolite and false evidence that purported to be a "semi-marked" vehicle but was actually an "unmarked" vehicle.

b) The decision conflicts with a Supreme Court decision or another decision of the Court of Appeals. This is demonstrated

P.S.

throughout the Defendant's Brief on Appeal to Michigan Court of Appeals and in Defendant's Application for Leave to Appeal in the Supreme Court of Michigan.

5.) The Defendant also raises several issues not presented to the Court of Appeals, but review of those issues should be foreclosed in this Court. When a defendant does not afford the Court of Appeals the opportunity to consider an issue, the Court of Appeals cannot have rendered a decision on it, and thus this Court has no jurisdiction to review it. Michigan Court Rule 7.301(A) sets out this Court's jurisdiction. The only relevant subsection - (2) - provides for jurisdiction of a case "after decision by the Court of Appeals." Subsection (2) also references MCR 7.302, which clarifies the meaning of "decision" and unquestionably requires that the Court of Appeals actually consider an issue - otherwise the "clearly erroneous" language is rendered superfluous. This Court specifically stated in *People v Holloway*,^④ that "an appellant may not raise in this Court an issue not presented to the Court

of Appeals." (5)

Reply: A) The prosecutor cites MCR 7.301(A) as setting out the Court's jurisdiction. MCR 7.301(A) states: At the first meeting of the Supreme Court in each odd-numbered year, the justices shall select by majority vote one among them to serve as Chief Justice. Nothing in this section speaks of jurisdiction.

(2) B) Next the prosecutor cites subsection (2) of MCR 7.301(A).

There is no subsection (2) or any subsection at all.

C) Prosecutor cites MCR 7.302 as clarifying the meaning of "decision".

In actuality, MCR 7.302 deals with electronic filing.

D) The case cited, *People v. Holloway*, 387 Mich 772 is a 1972 case and not binding (MCR 7.215(3)(1)).

E) The Application for Leave to Appeal in the Supreme Court of Michigan has a section called "New Issues"

This section must be for new issues and in the Application's Instructions on page (ii), the section entitled "Application, New Issues, pages 8-9 it says, "On these pages, you may ask the Supreme Court to consider issues that were not raised in the Court of Appeals."

F) It would be a miscarriage of justice to not consider these issues.

G) MCR 7.316 while a matter is pending in the Supreme Court, the Court may, at any time, in addition to its general powers

(3) permit the reasons or grounds of appeal to be amended or new grounds to be added.

G) In sum, the Defendant's application for leave to appeal raises no issues worthy of this Honorable Court's review, and it should be denied.

Reply: Every issue is worthy of review by this Honorable Court. It would be a miscarriage of justice not to consider these issues because defendant is actually innocent of violating charged statutes because the conduct is not that which is

proscribed by the charged statutes.

Defendant is guilty of the charge of Moving Violation Causing Death, a statute she was not charged with violating but which is a lesser included charge of Reckless Driving Causing Death (MCL 257.601(d) and MCL 257.626(s), respectively).

7.) Prosecutor incorporates the People's Brief to the Michigan Court of Appeals, so defendant may reply to that

A.) On P. 10 of Prosecutor's Brief on Appeal to the Court of Appeals, the Prosecutor states, "The evidence against Defendant was very strong including videotape evidence of her car crashing into the decedent's pickup truck at a high rate of speed"

Reply: This videotape evidence which is not disputed by defendant is evidence of a motor vehicle accident. It satisfies two elements of each of the charged crimes; that defendant was the driver of a motor vehicle, (2) upon a public highway. It is the other elements defendant disputes. The defendant was not intoxicated, not reckless and not fleeing an adequately

marked police vehicle driven by police officers in uniform and performing their lawful duties. The video demonstrates, at most, a moving violation (running a red light) causing death.

B.) On Page 10 of People's Brief on Appeal to Court of Appeals, prosecutor states: "The defendant does not explain what further investigation trial counsel could have endeavored to engage in that would have had a reasonable probability of a different result."

Reply: It is beyond clear that trial counsel did not even investigate or research the applicable statutes or relevant case law as demonstrated by the wrongful conviction on the Driving While License Suspended Causing Death and Serious Injury.

Defendant was convicted on driving with a metabolite in urine while the trial attorney did not know what a metabolite was P. 22 Gunther Hearing, 8/24/2018.

C.) On Page 10 of People's Brief on Appeal Prosecutor states, "The trial court found that there was no merit to this issue because the toxicology results would have been discoverable."

under the doctrine of implied consent and inevitable discovery. ^{as} 8/24/2018, 109

Reply: The court does not say anything about the doctrine of inevitable discovery on 8/24/2018, 109, or anywhere else. The court says, "I don't think it's suppressed or the Court would have ruled that it was suppressible." And, "A that the statute specifically says for implied consent, I'm talking about cocaine." These sentences are too vague to apply to anything. The only part of the implied consent statute (MCL 257.625a) that could be applied is MCL 257.625(a)(6)(c), but it doesn't apply because it allows for the toxicology of a blood sample taken after an accident. Defendant's toxicology was from urine, not blood.

8.) It is the People that have found nothing new to add to the argument. The People's Answer to Defendant's Application for leave to appeal consists entirely of Michigan Court Rules that either don't apply or don't exist, and the People's incorporation of Brief on Appeal does not adequately address arguments made in defendant's reply brief or her Application for Leave to Appeal.

wherefore defendant requests the
Honorable Supreme Court of Michigan to
grant leave to appeal and any other relief
deemed appropriate by this Court.

Kellie N Stock

KELLIE N STOCK

Prisoner # 260350

3201 Bemis Rd

Ypsilanti, MI 48197

Relief Requested -

STATE OF MICHIGAN

SUPREME COURT
(Court in which pleading is being filed)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Case No.: 160968

-79-

Kellie Nichole Stock
Defendant-Appellant

PROOF OF SERVICE

Defendant Kellie Stock, hereby states that on
(Name of Person)

3.24.2020, she mailed _____ of
(date) (number of copies)

Appellant's Reply Brief to
(name of documents being filed)

Michigan Wayne County Prosecutor
1441 St. Antoine, Detroit MI. 48226
(name and address of parties being served)

by placing the documents in the United States mail, properly addressed,
with first-class postage fully prepaid, expedited legal mail.

3.24.2020
(Date)

Kellie Stock / K Stock 260350
(Name/Signature)

3201 Bemis Rd
Ypsilanti, MI 48197
Womens Huron Valley
(Address)

