



## MICHIGAN COURTS NEWS RELEASE

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FOR IMMEDIATE RELEASE

### **Disputes involving tax overpayment interest, auto repossession, and criminal cases to be heard by Supreme Court in oral arguments**

LANSING, MI, March 31, 2014 – A dispute between Ford Motor Company and the Michigan Department of Treasury about calculating overpayment interest, whether agencies involved in auto repossession engaged in soliciting a claim for collection, as well as cases regarding restitution, court costs, expert testimony, and several criminal cases will be heard by the Michigan Supreme Court in oral arguments this week.

The Court will hear [\*Ford Motor Company v Department of Treasury\*](#). During a tax audit, Ford Motor Company and the Michigan Department of Treasury disagreed on the amount of money owed. Was Ford Motor Company's response to the Department of Treasury's audit letter a "petition...for refund" or "claim for refund" for purposes of calculating overpayment interest? Alternatively, was Ford Motor Company's request for an informal conference with the Department of Treasury, in spite of its later withdrawal of that request, such a petition or claim?

Also before the Court is [\*George Badeen v Par, Inc.\*](#) A "forwarding company" or "forwarder" is retained by a bank or lending institution to handle collection services on delinquent accounts. The forwarder, which is unlicensed, will then hire a licensed collection agency to carry out the actual repossession of collateral from the delinquent borrower. Is a forwarder acting as a "collection agency" under the Occupational Code, MCL 339.901(b), such that it is required to be licensed?

Also to be argued: [\*People v Ryan Christopher Smith\*](#), [\*People v Levon Lee Bynum\*](#), [\*People v Gordon Benjamin Wilding\*](#), [\*People v Matthew McKinley\*](#), and [\*People v Frederick Cunningham\*](#).

The Court will hear oral arguments in its courtroom on the sixth floor of the Michigan Hall of Justice on **April 2 and 3**, starting at **9:30 a.m.** each day. Oral arguments are open to the public; the Court also live streams its hearings at <http://courts.mi.gov/Courts/MichiganSupremeCourt/oral-arguments/live-streaming/Pages/live-streaming.aspx>

Summaries of the cases are posted on the "One Court of Justice" website; see <http://courts.mi.gov/Courts/MichiganSupremeCourt/oral-arguments/Pages/default.aspx> for the oral argument schedule.

Please note: These brief accounts may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, issues, procedural

history, and significance of these cases. For further details about the cases, please contact the attorneys. The State Bar of Michigan provides a directory of Michigan attorneys at [www.michbar.org](http://www.michbar.org)

**Wednesday, April 2**  
***Morning Session***

**FORD MOTOR COMPANY v DEPARTMENT OF TREASURY (case no. 146962)**

**Attorney for plaintiff-appellant:** Paul D. Hudson

**Attorney for defendant-appellee:** Matthew Burton Hodges

**Trial Court:** Court of Appeals, Court of Claims

**Issue:** During a tax audit, Ford Motor Company and the Michigan Department of Treasury disagreed on the amount of money owed. Was Ford Motor Company's response to the Department of Treasury's audit letter a "petition . . . for refund" or "claim for refund" for purposes of calculating overpayment interest? Alternatively, was Ford Motor Company's request for an informal conference with the Department of Treasury, in spite of its later withdrawal of that request, such a petition or claim? [Read More](#)

**PEOPLE v RYAN CHRISTOPHER SMITH (case no. 147187)**

**Prosecuting attorney:** Ana I. Quiroz

**Attorney for defendant-appellee:** Daniel J. Rust

**Trial Court:** Wayne County Circuit Court

**Issue:** The defendant was charged with carrying a concealed weapon, pled guilty, and requested a delayed sentence pursuant to MCL 771.1.3. The judge delayed sentence for one year, and then dismissed the case, concluding that the court no longer had jurisdiction over it. Did the trial court lose jurisdiction, for purposes of sentencing or otherwise, by failing to sentence the defendant within one year? Did the defendant waive any claim of error related to a delay in sentencing when he requested a delayed sentence under the statute? What remedy should apply to a failure to sentence a defendant within a year of conviction? [Read More](#)

**PEOPLE V LEVON LEE BYNUM (case no. 147261)**

**Prosecuting Attorney:** Brandon S. Hultink

**Attorney for defendant-appellee/cross-appellant:** Marc Crotteau

**Trial Court:** Calhoun County Circuit Court

**Issue:** A jury, which heard a police officer's expert testimony regarding gangs and gang membership during trial, found the defendant guilty of first-degree murder and four other felonies. Was the police officer's testimony more prejudicial than probative? To what extent did the profiling factors in *People v Murray*, 234 Mich App 46 (1999), apply to the admissibility of this expert testimony? Was any error by the trial court with respect to this testimony preserved? If there was any such error by the trial court, did the Court of Appeals correctly hold that the defendant was entitled to a new trial, or was any error harmless? [Read More](#)

*Afternoon break*

**GEORGE BADEEN/ALL OTHERS SIMILARLY SITUATED AND MIDWEST RECOVERY AND ADJUSTMENT, INC. v PAR, INC. d/b/a IIA, L.L.C, GE MONEY BANK, and MANHEIM RECOVERY SOLUTIONS (case no. 147150)**

**Attorney for plaintiffs-appellants:** Joseph M. Xuereb

**Attorney for defendants-appellees and MV Connect, L.L.C, d/b/a IIA, L.L.C., GE Money Bank, and Manheim Recovery Solutions, Defendants:** Clifford W. Taylor

**Trial Court:** Wayne County Circuit Court

**Issue:** A “forwarding company” or “forwarder” is retained by a bank or lending institution to handle collection services on delinquent accounts. The forwarder, which is unlicensed, will then hire a licensed collection agency to carry out the actual repossession of collateral from the delinquent borrower. Is a forwarder acting as a “collection agency” under the Occupational Code, MCL 339.901(b), such that it is required to be licensed? [Read More](#)

**PEOPLE v GORDON BENJAMIN WILDING (case no. 147675)**

**Prosecuting attorney:** William J. Vaillencourt, Jr.

**Attorney for defendant-appellant:** Jeanice Dagher-Margosian

**Trial Court:** Livingston Circuit Court

**Issue:** The defendant pled guilty to third-degree criminal sexual conduct and was placed on youthful trainee status. After the defendant pled guilty to a probation violation, the court revoked his youthful trainee status and sentenced him to serve 85 months to 15 years in prison. Did the trial court erroneously assess 15 points each for Offense Variables 8 (victim asportation or captivity) and 10 (exploitation of a victim’s vulnerability)? Is the defendant entitled to resentencing? [Read More](#)

**Thursday, April 3**

*Morning Session*

**PEOPLE v MATTHEW MCKINLEY (case no. 147391)**

**Prosecuting attorney:** Brandon S. Hultink

**Attorney for defendant-appellant:** Christopher M. Smith

**Trial Court:** Calhoun Circuit Court

**Issue:** The defendant was convicted of malicious destruction of personal property over \$20,000 and inducing a minor to commit a felony. After a post-sentencing hearing, the trial court ordered the defendant to pay a total of \$158,180.44 in restitution. The court earmarked \$63,749.44 for the four victims of the charged crimes; it designated the remainder for the victims of uncharged crimes.

Is an order of restitution equivalent to a criminal penalty? Is Michigan’s statutory restitution scheme unconstitutional insofar as it permits the trial court to order restitution based on

uncharged conduct that was not submitted to a jury or proven beyond a reasonable doubt?

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**PEOPLE v FREDERICK CUNNINGHAM (case no. 147437)**

**Prosecuting attorney:** Aaron D. Lindstrom

**Attorney for defendant-appellant:** Anne M. Yantus

**Trial Court:** Allegan Circuit Court

**Issue:** Under MCL 769.1k(1)(b)(ii), a sentencing court is authorized to assess costs against a criminal defendant. In *People v Sanders*, the Court of Appeals held that a sentencing court's assessment of "court costs" under the statute must bear a reasonable, but not exact, relationship to the actual costs incurred by the court. Was *Sanders* correctly decided? Are "court costs" the same as "costs of prosecution"? In this case, did the sentencing court err in imposing a flat fee of \$1,000 in court costs on the basis that the fee was reasonably related to the \$1,238.48 average cost per criminal case in the county? [Read More](#)

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