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Law Day comes early to Midland: Michigan Supreme Court to visit April 17

Lansing, MI, April 11, 2013 – "Law Day" – the annual May 1 celebration of the rule of law in the United States – is coming early to Midland this year, with the April 17 visit of the Michigan Supreme Court.

The Court will hold oral argument at the Midland Center for the Arts on April 17. While the Court normally hears oral argument at the Michigan Hall of Justice in Lansing, the Court holds oral arguments in different communities around the state as part of its "Court Community Connections" program. The program is aimed principally at educating high school students about the Court and Michigan's justice system.

In the audience for the oral argument will be students from Bullock Creek, Calvary Baptist, Coleman, H.H. Dow, Freeland, Juvenile Care Center, Meridian, Midland Christian, Midland, and Windover high schools, as well as local home-schooled students. Members of the Northwood University Mock Trial team and the Saginaw Valley State University Law Club will also attend. Midland County Circuit Judge Michael J. Beale and attorneys from the Midland County Bar Association are mentoring students as they study the case the Court will hear.

After the oral argument, the students will meet with the attorneys in the case, Matthew A. Fillmore of the Oakland County Prosecutor's Office and John D. Roach, Jr. of Troy, for a debriefing.

Chief Justice Robert P. Young, Jr. said that the Court started "Court Community Connections" in 2007 "to show a side of the legal process that's not very well known or understood. Most films or television dramas about the law focus on trials because that is where the drama is. The irony is the appellate process can have a far greater impact on a larger number of people, yet it receives very little attention. Through this program, students not only learn about the appellate process; they get to see it in action."

Midland County Probate Judge Dorene S. Allen praised the Midland County Bar Association and the Midland Center for the Arts for their support. "This event would not be possible without their cooperation," said the judge, whose responsibilities include presiding over Midland's juvenile court. She added, "This event is a great opportunity for our young people to see the rule of law at work. I can think of no better way to celebrate Law Day."

The Midland Center for the Arts is located at 1801 W. Andrews Road. The oral argument starts at 12:30 p.m.; security screening will begin at 11:30 a.m. Some open seating is available on a first-come, first-served basis.

The case is *People v Chandra Valencia Smith-Anthony*. (Please note: The summary that follows is a brief account of this case and may not reflect the way in which some or all of the Court's seven Justices view the case. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of the case. Briefs are available on the Supreme Court's web site at http://www.courts.mi.gov/Courts/MichiganSupremeCourt/Clerks/Oral-Arguments/2012-2013/Pages/145371.aspx. For further details about the case, please contact the attorneys.)

PEOPLE v SMITH-ANTHONY (case no. 145371)
Court of Appeals case no. 300480
Prosecuting attorney: Matthew A. Fillmore/(248) 858-0656
Attorney for defendant Chandra Valencia Smith-Anthony: John D. Roach, Jr./(248) 721-6980
Trial Court: Oakland County Circuit Court
At issue: A department store security officer observed the defendant taking a box of fragrance without paying for it; the officer followed the defendant through the store and was close enough to see the defendant place the fragrance box in her bag, and also to hear the defendant speak to sales staff. The officer followed the defendant into the mall outside the store and confronted her there; in the ensuing scuffle, the defendant bit and scratched the officer. Did the defendant's actions amount to "larceny from the person" – "stealing from the person of another" – under MCL 750.357?

Summary: Chandra Valencia Smith-Anthony placed a $58 box of fragrance in a shopping bag and left the Macy's department store in Northland Mall without paying for it. A Macy's security officer had been observing Smith-Anthony, first on closed-circuit television; the officer then began to follow Smith-Anthony, keeping her in sight as she moved around the store. Smith-Anthony initially held the box in her hand, then pushed it into a brown paper grocery bag that she was carrying. After confirming that Smith-Anthony had not paid for the fragrance, the security officer followed her from the store and confronted her approximately 30 or 35 feet into the mall. The two scuffled, and Smith-Anthony bit and scratched the security officer's arm, the officer asserted.

The prosecution charged Smith-Anthony with unarmed robbery, MCL 750.530; second-degree retail fraud, second or subsequent offense, MCL 750.356d(4); and possession of marijuana, MCL 333.7403(2)(d). On the day of trial, the prosecution dismissed the marijuana and retail-fraud charges. The jury acquitted defendant of unarmed robbery, but convicted her of the lesser offense of larceny from the person, MCL 750.357. The court sentenced Smith-Anthony to four to 20 years' imprisonment.

Smith-Anthony appealed, and in a 2-1 published decision, the Court of Appeals reversed her conviction. MCL 750.357 punishes "larceny from the person" – but Smith-Anthony's actions did not amount to "stealing from the person of another," the majority held.

"We must apply the plain, unambiguous language of a statute as written and may only engage interpretative tools when the statutory language is equally susceptible to more than one meaning," the majority observed.

"The statute at issue in this case could not be simpler. It provides: 'Any person who shall commit the offense of larceny by stealing *from the person of another* shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years.' MCL 750.357 (emphasis added)."

"To establish a larceny-from-the-person charge beyond a reasonable doubt, the prosecution must prove '(1) the taking of someone else's property without consent, (2) movement of the property, (3) with the intent to steal or permanently deprive the owner of the property, and (4) the property was taken *from the person or from the person's immediate area of control or immediate presence*,'" the majority explained.

Unlike simple larceny, the crime of "larceny from the person" involves the invasion of the victim's person or immediate presence, the majority stated. The majority cited *United States v Payne*, 163 F3d 371, 375 (CA 6, 1998), in which the U.S. Court of Appeals for the Sixth Circuit interpreted larceny from the person, under MCL 750.357, as "a crime that creates a substantial risk of physical harm to another."

The statute punishes crimes like purse- and wallet-snatching, where the criminal has direct contact with the victim, the majority said. The statute also covers thefts that take place close to the victim, as when a thief grabs a suitcase that a person has temporarily set down, or when a jeweler presents a tray of jewelry and a thief snatches items from it. Such crimes cause victims to fear for their safety, or place a victim who resists at risk of violence, the majority reasoned. It is because of the "aggravated" nature of the offense that the "statute enhances punishment in these situations."

But in Smith-Anthony's case, the prosecution presented no evidence that Smith-Anthony committed larceny from the person of the security officer, the majority stated. Although the security officer could see Smith-Anthony commit the larceny, the evidence did not show that the officer ever held the fragrance box or was in Smith-Anthony's "personal space" when Smith-Anthony completed the larceny by pushing the fragrance box into her brown paper grocery bag, the majority said.

Citing *People v Gould*, 384 Mich 71 (1970), the majority said that the larceny-from-the-person statute "protects property on a victim's person or within a victim's 'immediate' custody and control, and the prosecution must present proof beyond a reasonable doubt of that proximity element." In *Gould*, robbers entered a restaurant, announced a holdup, and forced a waitress and a customer to lie on the floor of another room; the robbers took $77 from a cash register and a cigar box and $7 from the customer's wallet. A jury convicted one of the robbers of larceny from the person, and the Michigan Supreme Court upheld the conviction, noting in part "that the taking of property in the possession and immediate presence of the waitress and customer in this case was sufficient to sustain a verdict against defendant Gould of larceny from the person."

"In contrast with *Gould*, no testimony in this case supports a finding that [the security officer] ever got close enough to the White Diamonds box to immediately possess it or that defendant stole the item while invading [the officer's] person or encroaching on her 'immediate presence,'" the majority said.

The majority observed that "the prosecution could have easily established that defendant committed third degree retail fraud. See MCL 750.356d(4)(b) (proscribing the theft of merchandise priced less than $200)." Also, the majority said, Smith-Anthony's violence against the security officer could have supported an unarmed robbery conviction, in that the transactional-unarmed-robbery statute punishes the use of "force or violence against any person who is present" or assaulting or putting a victim in fear while "in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property." MCL 750.530." "However, the jury acquitted defendant of unarmed robbery, and we may not second-guess its judgment."

The majority said it did not condone Smith-Anthony's actions or suggest that she acted lawfully, but "[w]e must take the charges as we find them, and defendant's actions did not support a charge, let alone a conviction, under the plain language of the larceny-from-the-person statute."

But the dissenting judge said there was sufficient evidence, based on "undisputed facts," for a jury to conclude that Smith-Anthony had committed larceny from the person. He noted that, according to the security officer's testimony, she kept Smith-Anthony in sight from the time Smith-Anthony left the fragrance department with the box in her hand. The security officer was close enough to hear two different salespeople approach Smith-Anthony and ask if she needed assistance, and to hear Smith-Anthony decline. The officer also remained close enough that she could hear Smith-Anthony, in the shoe department, ask for a pair of shoes; she was close enough to see Smith-Anthony place the fragrance box into her bag, to see that Smith-Anthony did not pay for the fragrance, and to see that about half the fragrance box was sticking out of the bag.

The prosecution only needed to establish that "the property was taken from the person or from the person's immediate area of control or immediate presence," the dissent explained. Citing *People v Gould*, the dissent said that, "A defendant may be found guilty of robbery, or the lesser included offense of larceny from the person, if the defendant takes property owned by a business in the immediate presence of an employee who oversees or protects the property."

The dissent said that "the majority blurs the basic issue by asserting that no testimony 'supported that [the security officer] ever possessed the fragrance box . . . .'" The security officer, as one protecting Macy's property, had a superior right to the fragrance box than Smith-Anthony did, so it did not matter that the security officer had not touched the box, the dissent maintained.

Moreover, the officer's testimony established that Smith-Anthony was in the security officer's "immediate area of control or immediate presence," the dissenting judge stated. "In my view, when a loss-prevention detective, whose job it is to protect his or her employer's property, is close enough to a defendant to *see* that defendant commit the crime of larceny from the person and to actually *hear* that defendant speak to other employees in the store, the defendant is as a

matter of law within the loss-prevention detective's immediate area of control or immediate presence. Thus … there was sufficient evidence to support the jury's verdict."

The prosecution appealed; in an order dated October 31, 2012, the Supreme Court granted leave to appeal. The Court directed, "The parties shall include among the issues to be briefed: (1) whether the evidence was sufficient to prove beyond a reasonable doubt that the crime of larceny from a person, MCL 750.357, was committed within the 'immediate area of control or immediate presence' of the loss prevention officer who witnessed the theft; (2) whether the 2004 amendment of the robbery statute, 2004 PA 128 (amending MCL 750.530), altered the definition of 'presence' with respect to the larceny from a person statute; and, if not (3) whether the common-law definition of the phrase 'from the person' remains consistent with the common-law definition of 'presence.'"

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