



MICHIGAN COURTS NEWS RELEASE

John Nevin, Communications Director

Ph: 517-373-0129 Twitter: @MISupremeCourt FB: facebook.com/misupremecourt

FOR IMMEDIATE RELEASE

Michigan Supreme Court Announces December 2019 Oral Arguments Schedule

LANSING, MI, November 25, 2019 —The Michigan Supreme Court announced that oral arguments in five cases will be heard December 11, 2019. The Court will convene to hear the cases beginning at 9:30 a.m. in the Supreme Court courtroom, located on the sixth floor of the Hall of Justice. The schedule of arguments is posted on the Supreme Court's oral arguments [homepage](#).

The Court broadcasts its oral arguments and other hearings [live](#) on the Internet. Watch the stream only while the Court is in session and on the bench. Streaming will begin shortly before the hearings start; audio will be muted until justices take the bench. Follow the Court on [Twitter](#) to receive regular updates as cases are heard. Please contact the Office of Public Information at 517-373-0129 or SeaksL@courts.mi.gov for permission to film or photograph during the hearing. See the link to [Request and Notice for Film and Electronic Media Coverage of Court Proceedings](#). The request must be submitted three days in advance of the hearing.

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.

**Wednesday, December 11, 2019
Morning Session - 9:30 a.m.**

MOAA 158903

FRANK ANTHONY SCOLA,
Plaintiff-Appellant,

Steven Hicks

v (Appeal from Ct of Appeals)
(Wayne – Murphy, J.)

JP MORGAN CHASE BANK, NATIONAL
ASSOCIATION, and JP MORGAN CHASE &
CO.,

Robert Kamenec

Defendants-Appellees,
and

KATHLEEN SCOLA, ESTATE OF JOHN
BARROW BROWN, and CITY OF
WAYNE,

Defendants.

In 2003, when plaintiff Frank Scola was a child, he was a passenger in his mother's car when she collided head-on into another car. His mother had turned the wrong way onto a one-way road when exiting the bank defendants' parking lot. In 2015, plaintiff filed this lawsuit, alleging a claim of negligence against the bank defendants. The trial court granted defendants' motion for summary disposition, concluding that plaintiff's claim was based on a theory of premises liability, not negligence, and that defendants did not have a duty to post a sign warning drivers about the one-way road, and that any danger associated with turning the wrong way onto a one-way road is open and obvious. In a split unpublished opinion, the Court of Appeals affirmed. The Supreme Court has ordered oral argument on plaintiff's application for leave to appeal to address whether the Court of Appeals erred in holding that plaintiff's claim was based on premises liability rather than ordinary negligence.

[MOAA 157936](#)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Allison Freed

v (Appeal from Ct of Appeals)
(Kent – Trusock, M.)

JAMAL DEVONTA BENNETT,
Defendant-Appellant.

Christine Pagac

Defendant was charged with open murder and felony-firearm for the fatal shooting of Derecko Martin during a fight between defendant and his friends and Martin and his family and friends. Defendant claimed that he acted in self-defense and/or in defense of others. At trial, the prosecutor admitted into evidence two rap videos over defense objection. The prosecutor also elicited testimony from several witnesses regarding defendant and his friends' gang affiliation without objection from the defense. The jury convicted defendant of second-degree murder and felony-firearm. The Court of Appeals affirmed, holding that the trial court erred in admitting the rap videos and gang-affiliation evidence, but the error was harmless under the standard of review for preserved error. The Supreme Court vacated that part of the Court of Appeals opinion addressing harmless error and remanded for reconsideration of the issue. On remand, the appeals court again concluded that defendant was not entitled to relief. The Supreme Court has ordered oral argument on defendant's application for leave to appeal to address whether the Court of Appeals erred in concluding: (1) that the preserved error in admitting the rap videos was not outcome-determinative; (2) that the unpreserved error in admitting the gang-affiliation testimony was not plain error; and (3) that the erroneously admitted evidence, in conjunction with the prosecutor's argument in closing that this evidence showed the "mentality" of defendant and his friends and the "lifestyle" they lived, did not constitute impermissible character evidence under MRE 404(a) and *People v Bynum*, 496 Mich 610 (2014).

MOAA 158300

KEITH SMITH

Plaintiff-Appellee/
Cross-Appellant,

Gerald Acker

v (Appeal from Ct of Appeals)
(Kent – Trusock, M.)

CITY OF DETROIT,
Defendant/Cross-Plaintiff,

and

MERLO CONSTRUCTION COMPANY, INC.,
Defendant/Cross-Defendant-
Appellant/Cross-Appellee,

and

John Schutzka

RAUHORN ELECTRIC, INC.,
Defendant/Cross-Defendant/
Cross-Plaintiff,

and

PARSONS BRINCKERHOFF MICHIGAN, INC.,
and POCO, INC.,
Defendants/Cross-Defendants.

Plaintiff was riding his bicycle one evening in the city of Detroit and came upon an area of sidewalk where two slabs of concrete were missing, having been removed a few days earlier by defendant Merlo Construction Company as part of a sidewalk repair project. Plaintiff's bicycle flipped, throwing him to the ground. He filed this lawsuit against the city of Detroit and additional defendants who were involved in the project. As to plaintiff's claim against Merlo Construction, the trial court granted defendant's motion for summary disposition, holding that plaintiff's allegations constituted a premises liability claim and that the hazard was open and obvious. The Court of Appeals agreed that the case was based on premises liability, but concluded that a question of fact existed whether the hazard was open and obvious.

Consequently, the appeals court reversed and remanded to the trial court for further proceedings. One judge dissented from the majority holding that there was a question of fact whether the hazard was open and obvious. The Supreme Court has ordered oral argument on plaintiff's application for leave to appeal as cross-appellant to address whether defendant cross-appellee maintained possession and control over the sidewalk such that plaintiff's claim is based on premises liability rather than ordinary negligence. Compare *Orel v Uni-Rak Sales Co Inc*, 454 Mich 564 (1997), and *Finazzo v Fire Equipment Co*, 323 Mich App 620 (2018), with *Fraim v City Sewer of Flint*, 474 Mich 1101 (2006).

MOAA 158716

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Amanda Smith

v (Appeal from Ct of Appeals)
(Wayne – Callahan, J.)

GARY GILMORE,
Defendant-Appellant.

Steven Helton

In 2016, defendant was involved in a scheme to alter UPC codes on items at Home Depot to reflect lower prices and then return the items without a receipt for a credit at the original price. He pleaded guilty to organized retail crime and using a computer to commit a crime in exchange for, among other things, a sentence agreement to serve probation and a jail term, and to pay \$18,000 in restitution. Defendant admitted at the plea hearing that the total amount stolen was less than \$400.” When defense counsel asked whether defendant was entitled to a hearing on the amount of restitution, the trial court denied the request. At sentencing, the trial court stated that it would not abide by the sentencing agreement and offered defendant the opportunity to withdraw the plea. Defendant chose not to withdraw the plea and was sentenced to serve concurrent prison terms of probation for the conviction of organized retail crime and thirty months to seven years for the conviction of using a computer to commit a crime. Defendant was also ordered to pay \$18,000 in restitution. On appeal, defendant argued that he was entitled to a restitution hearing. In a split decision, the Court of Appeals denied leave to appeal. The Supreme Court remanded the case to the Court of Appeals for consideration as on leave granted of whether defendant waived the question of entitlement to a hearing on the amount of restitution, and if not, whether the trial court erred in denying him such a hearing. On remand, the Court of Appeals affirmed, holding that because defendant failed to affirmatively request a hearing on restitution, the issue was not preserved for appeal, and that defendant had waived his right to a hearing. The Supreme Court has ordered oral argument on defendant’s application for leave to appeal to address: (1) whether defendant waived the question of his entitlement to an evidentiary hearing regarding the amount of restitution, compare *People v Gahan*, 456 Mich 264, 276 (1997), with *People v Carter*, 462 Mich 206, 215 (2006); and if not, (2) whether the Wayne Circuit Court erred in denying defendant such a hearing. See *People v McKinley*, 496 Mich 410 (2014).

Wednesday, December 11, 2019
Afternoon Session – t/b/d

No. 1 158068

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Jon Wojtala

v (Appeal from Ct of Appeals)
(Wayne – Skutt, R.)

TYKEITH L. TURNER,
Defendant-Appellant.

Erin Van Campen

In 1995, a jury convicted the juvenile defendant of first-degree premeditated murder, assault with intent to murder, and felony-firearm. Defendant was 16 years old when the crimes were committed, but he was sentenced as an adult to serve prison terms of life without the possibility of parole for the murder and life with the possibility of parole for the assault, consecutive to a two-year term for felony-firearm. Years later, after the passage of remedial legislation, the prosecutor conceded that defendant was entitled to resentencing to a term of years for the murder. The trial court did so, and also resentenced defendant to serve a term of years for the assault conviction. On the prosecutor's appeal, the Court of Appeals agreed that the trial court did not have authority to resentence defendant on the assault conviction, and it remanded the case to the trial court for reinstatement of the original life sentence, which carries the possibility of parole. The Supreme Court has granted the prosecution's application for leave to appeal to address: (1) whether a legal misconception concerning a defendant's sentence on one count renders the sentences for other counts arising out of the same transaction invalid; (2) whether the requirements for a motion for relief from judgment must be satisfied before a defendant may be resentenced on other counts where a change in the law requires resentencing for one count, or whether a trial court may exercise its discretion to resentence on other counts where resentencing is required for one count; and (3) if the latter, what parameters apply to the exercise of the court's discretion when deciding whether to resentence on other counts.

-MSC-