



MICHIGAN COURTS NEWS RELEASE

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Michigan Supreme Court Announces January 2019 Oral Arguments Schedule

LANSING, MI, January 2, 2019 —The Michigan Supreme Court announced that oral arguments in 11 cases will be heard January 23-24, 2019. The Court will convene to hear the first case at 9:30 a.m. in the sixth floor of the Hall of Justice, 925 W. Ottawa Street. 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 via streaming video technology. Watch the stream live 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, January 23, 2019
Morning Session**

[MOAA 156746](#)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

Jerrold Schrottenboer

v (Appeal from Ct of Appeals)
(Jackson – McBain, J.)

DAWN MARIE DIXON-BEY,
Defendant-Appellee.

Gary Strauss

Defendant fatally stabbed Gregory Stack, her longtime boyfriend, in the heart. After first giving the police a false story about who stabbed the victim, defendant admitted she had done it, but

claimed to have acted in self-defense. She was charged with first-degree murder. A jury convicted her of the lesser offense of second-degree murder. The trial judge sentenced defendant to serve a prison term of 35 to 70 years, a 15-year departure from the sentencing guidelines range, primarily because of his finding that defendant “brutally murdered [Stack] in cold blood.” In a split published opinion, the Court of Appeals majority held that the trial court’s departure sentence was not reasonably proportionate to the offense and the offender; it vacated her sentence and remanded for resentencing. The dissenting judge found no abuse of discretion by the trial court. The Supreme Court has ordered oral argument on the prosecutor’s application for leave to appeal to address: (1) to what extent the sentencing guidelines should be considered to determine whether the trial court abused its discretion in applying the principle of proportionality under *People v Steanhouse*, 500 Mich 453 (2017); and (2) whether, when a jury convicted the defendant of second-degree murder, the trial court abused its discretion in applying the principle of proportionality if it either (a) sentenced the defendant according to an independent finding that she committed first-degree murder; or (b) departed upward from the sentencing guidelines for second-degree murder based on facts established by a preponderance of the evidence that the jury did not find were established beyond a reasonable doubt. See MCL 777.36(2)(a); *People v Ewing (After Remand)*, 435 Mich 443 (1990); *People v Milbourn*, 435 Mich 630, 654 (1990). The case will be considered together with *People v Beck*, Docket No. 152934.

[MOAA 152934](#)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Nathan Collison

v (Appeal from Ct of Appeals)
(Saginaw – Borchard, J.)

ERIC LAMONTEE BECK,
Defendant-Appellant.

Philip Ellison
Matthew Gronda

One evening in June 2013, defendant Eric Beck and Hoshea Pruitt got into a fight. A short while later, Pruitt was fatally shot. Defendant was at the scene, but witness testimony was equivocal whether he was the shooter. A jury acquitted him of murder and other charges, but convicted him of being a felon in possession of a firearm as a habitual offender and possession of a firearm during commission of a felony, second offense. The trial court sentenced defendant to serve consecutive prison terms of 5 years for felony-firearm, second-offense and 20 to 33 years for felon-in-possession, a nearly 14-year departure from the sentencing guidelines range of 22 to 76 months. The trial judge stated that the departure was warranted because of his finding by a preponderance of the evidence that defendant was the shooter, and, therefore, responsible for Pruitt’s murder. The Court of Appeals affirmed defendant’s convictions in an unpublished opinion, but remanded for a hearing pursuant to *People v Lockridge*, 498 Mich 358 (2015), and *United States v Crosby*, 397 F3d 103 (CA 2, 2005). The Supreme Court held the case in abeyance for *People v Steanhouse* (152849) and *People v Masroor* (152946-8). After those cases were decided, the Supreme Court ordered oral argument on defendant’s application for leave to appeal to address: (1) the appropriate basis for distinguishing between permissible trial court consideration of acquitted conduct, see *People v Ewing (After Remand)*, 435 Mich 443, 451-452

(opinion by Brickley, J.), 473 (opinion by Boyle, J.) (1990); see also *United States v Watts*, 519 US 148 (1997), and an impermissible “independent finding of defendant’s guilt” by a trial court on an acquitted charge, see *People v Grimmer*, 388 Mich 590, 608 (1972), overruled on other grounds by *People v White*, 390 Mich 245, 258 (1973); see also *People v Fortson*, 202 Mich App 13, 21 (1993); and (2) where the jury acquitted defendant of murder, whether the trial court abused its discretion by departing from the sentencing guidelines range based on its finding by a preponderance of the evidence that defendant committed the killing. This case will be considered together with *People v Dixon-Bey* (156746).

MOAA 156651

DONNA WALKER, WILLIAM WALKER, and
HEAD TO TOES MASSAGE THERAPY OF
OXFORD, INC,
Plaintiffs-Appellees,

Kelly Kruse

v (Appeal from Ct of Appeals)
(Oakland – McMillen, P.)

OTIS M. UNDERWOOD, JR.,
Defendant-Appellant.

Richard McDonnell

Defendant Otis M. Underwood, Jr., agreed to develop part of a building he owns in Lake Orion so that plaintiffs Donna and William Walker could use the space for their massage therapy business. As part of their preliminary agreement, defendant promised to obtain an occupancy permit. When that did not occur in a timely manner, plaintiffs withdrew from the agreement and then filed this lawsuit alleging breach of contract. The trial court granted summary disposition to defendant based on a paragraph in the parties’ contract expressly permitting plaintiffs, in the event of a breach, to declare a default and terminate the contract, or receive another agreed-upon remedy. The Court of Appeals, in a split decision, reversed the grant of summary disposition. The majority interpreted the at-issue paragraph as non-exclusive, thereby allowing plaintiffs to pursue all other potential remedies, including their breach of contract claim. The dissent opined that, by listing two available remedies, it was evident that the parties intended those to be the exclusive remedies available for a breach, and that defendant was entitled to summary disposition. The Supreme Court has ordered oral argument on defendant’s application for leave to appeal to address the meaning of paragraph 10 of the parties’ agreement that is in dispute and the applicability of the legal canon *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another) in the interpretation of that paragraph.

MOAA 156270

WILLIAM R. HENDERSON and All Others
Similarly Situated,
Plaintiffs-Appellants,

Mary Ellen Gurewitz
Marshall Widick

v (Appeal from Ct of Appeals)
(Ingham – Collette, W.)

Plaintiffs are among the 2,500 employees of the Department of Corrections whose positions were abolished, resulting in their reclassification to a lower pay grade while still performing the same duties. Plaintiffs, through their union, administratively challenged the reclassification. Ultimately, the Civil Service Commission issued a final determination that upheld the reclassification. On judicial review, the circuit court held that the reclassification was arbitrary and capricious, and unsupported by competent, material, and substantial record evidence. Defendants appealed. The Court of Appeals reversed in a published opinion, holding that review of a final agency determination, where a hearing is not required, is limited to whether the decision is authorized by law. The Supreme Court has ordered oral argument on plaintiffs' application for leave to appeal to address: (1) whether the "authorized by law" scope of review under Const 1963, art 6, § 28, applied to plaintiffs' judicial review of the Civil Service Commission's final decision made without a hearing; (2) if so, whether the Court of Appeals gave proper meaning to the "authorized by law" constitutional standard; and (3) whether the Court of Appeals correctly applied that scope of review to plaintiffs' challenge.

Wednesday, January 23, 2019
Afternoon Session

MOAA 156430

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Daniel Hebel

v (Appeal from Ct of Appeals)
(Wayne – Lillard, Q.)

KELLI MARIE WORTH-MCBRIDE,
Defendant-Appellant.

Christine Pagac

Defendant left her infant in the care of her boyfriend, the infant's father, while she ran an errand. She did so even though she had witnessed her boyfriend abuse the infant on at least four occasions. When she returned, she saw her boyfriend severely abusing their son. She intervened to stop the abuse and then directed a friend to call 911. The infant suffered numerous injuries, including multiple bone fractures that were at different stages of healing. The infant died of his injuries at the hospital. Defendant was charged with first-degree child abuse, MCL 750.136(b)(2), and first-degree felony murder, MCL 750.316. Following a bench trial, the trial court found defendant guilty of first-degree child abuse and second-degree murder, MCL 750.317. The court sentenced defendant to serve concurrent prison terms of 25 to 40 years in prison for first-degree child abuse and 15 to 30 years for second-degree murder. On appeal, defendant challenged the sufficiency of the evidence to convict. The Court of Appeals affirmed in an unpublished decision. The Supreme Court has ordered oral argument on defendant's application for leave to appeal to address: (1) whether a parent/defendant, either as a principal or as an aider and abettor, can be

convicted of first-degree child abuse or second-degree murder when a child suffers serious physical harm or death as a result of the parent/defendant leaving the child in the care of the other parent with knowledge that the other parent previously injured the child and that serious physical harm or death would be caused by leaving the child with the other parent; and (2) if so, whether the evidence is sufficient in this case to establish the defendant's knowledge that serious physical harm or death would be caused by leaving the child with the other parent. The case will be argued at the same session of the Court as *People of MI v James Lee*, Docket No. 157176.

MOAA 157176

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

Ana Quiroz

v (Appeal from Ct of Appeals)
(Wayne – Cox, K.)

JAMES LEE,
Defendant-Appellee.

Jason Eggert

Defendant was the legal guardian of his 15-year-old, developmentally delayed nephew. He admitted permitting his live-in boyfriend to sexually penetrate his ward on two occasions because he believed it was consensual. Defendant was charged with two counts of first-degree criminal sexual conduct and second-degree child abuse. At trial, the prosecution's theory was that defendant left his ward in his boyfriend's unsupervised care, knowing that his boyfriend was likely to engage in sexual penetration of his ward. The ward provided a conflicting account of the two instances of sex between himself and defendant's boyfriend, but he denied that the sex was consensual. A jury acquitted defendant of the first-degree criminal sexual conduct charge, but convicted him of second-degree child abuse, MCL 750.136b(3)(b). The trial court sentenced defendant to serve a term of probation. The Court of Appeals reversed defendant's conviction in an unpublished decision, relying on *People v Murphy*, 321 Mich App 355 (2018), for the proposition that the failure to protect is not an affirmative act for the purposes of second-degree child abuse. The Supreme Court has ordered oral argument on the prosecution's application for leave to appeal to address whether there is sufficient evidence for a rational trier of fact to conclude beyond a reasonable doubt that defendant committed an "act," as that term is used in MCL 750.136b(3)(b). The case will be argued at the same session of the Court as *People of MI v Kelli Marie Worth-McBride*, Docket No. 156430.

**Thursday, January 24, 2019
Morning Session**

MOAA 156180

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Amanda Smith

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

DORIAN LAMARR PRICE,
Defendant-Appellant.

Douglas Baker

In September 2014, defendant was involved in escalating altercations with Clyde Beauchamp, who was the caretaker of several residential properties in Detroit, including the house in which defendant's sister-in-law lived with her children. The last incident resulted in defendant shooting Beauchamp. After a bench trial, defendant was convicted of assault with intent to do great bodily harm (AWIGBH) and felonious assault, both arising from the last incident. On appeal, defendant argued that the trial judge, sitting as fact-finder, rendered inconsistent verdicts because AWIGBH requires an "intent to do great bodily harm, less than the crime of murder," whereas felonious assault is defined as an assault "without intending to commit murder or to inflict great bodily harm less than murder." Defendant argues that the Legislature did not intend to punish him for the same act under both statutes in violation of double jeopardy. The Court of Appeals affirmed in an unpublished split decision. The Supreme Court has directed oral argument on defendant's application for leave to appeal to address: (1) whether the defendant's convictions under MCL 750.82 and MCL 750.84 violate double jeopardy; (2) whether MCL 750.82 and MCL 750.84 contain contradictory and mutually exclusive provisions such that the Legislature did not intend a defendant to be convicted of both crimes for the same conduct, compare *People v Miller*, 498 Mich 13, 18-26 (2015), with *People v Doss*, 406 Mich 90, 96-99 (1979); (3) whether the Court of Appeals in *People v Davis*, 320 Mich App 484 (2017), erred in recognizing a rule against mutually exclusive verdicts in Michigan, see generally *United States v Powell*, 469 US 57, 69 n 8 (1984); *State v Davis*, 466 SW3d 49 (Tenn, 2015); and (4) whether that rule is applicable to the facts of this case. This case will be argued at the same session as *People v Davis*, Docket No. 156406.

156406

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

Amanda Smith

v (Appeal from Ct of Appeals)
(Wayne – Cameron, T.)

JOEL EUSEVIO DAVIS,
Defendant-Appellee.

Jacqueline McCann

Defendant assaulted his girlfriend by repeatedly striking her head in the bedroom of their home. When she ran to the living room, he followed and repeatedly punched her in the face, causing her nose and mouth to fill with blood. A jury convicted defendant of assault with intent to do great bodily harm (AWIGBH) and aggravated domestic assault-second offense. On appeal, defendant argued that his convictions violated the constitutional prohibition against double jeopardy because the crimes of AWIGBH and aggravated domestic assault have contradictory intent elements; the AWIGBH statute requires the assault to be committed "with" the intent to do great bodily harm less than murder, whereas the aggravated domestic assault statute requires the assault to be committed "without" the intent to do great bodily harm less than murder. In a published opinion, the Court of Appeals held that defendant was improperly convicted "for a

single act under two statutes with contradictory and mutually exclusive provisions” and vacated defendant’s conviction for aggravated domestic assault. Both parties sought leave to appeal in the Supreme Court, which has granted leave to appeal to address: (1) whether the defendant’s convictions under MCL 750.81a(3) and MCL 750.84 violate double jeopardy; (2) whether MCL 750.81a and MCL 750.84 contain contradictory and mutually exclusive provisions such that the Legislature did not intend a defendant to be convicted of both crimes for the same conduct, compare *People v Miller*, 498 Mich 13, 18-26 (2015), with *People v Doss*, 406 Mich 90, 96-99 (1979); (3) whether the Court of Appeals erred in recognizing a rule against mutually exclusive verdicts in Michigan, see generally *United States v Powell*, 469 US 57, 69 n 8 (1984); *State v Davis*, 466 SW3d 49 (Tenn, 2015); and (4) whether the Court of Appeals erred in applying this rule to the facts of this case. This case will be argued at the same session as *People v Price*, Docket No. 156180.

MOAA 155198

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Jon Wojtala

v (Appeal from Ct of Appeals)
(Wayne – Lillard, Q.)

HAROLD LAMONT WALKER,
Defendant-Appellant.

Adrienne Young

Police officers saw defendant, a felon, pull a gun out of his pocket and throw it into some bushes. At trial on weapons charges, defendant testified that what he threw was a beer bottle, and a defense witness testified that the gun belonged to him, not defendant, and that he had hidden it in the bushes, where it was found, before defendant arrived. A jury convicted defendant of being a felon in possession of a firearm, carrying a concealed weapon (CCW), and possession of a firearm during commission of a felony, third offense. The trial judge sentenced defendant as a habitual-fourth offender to serve concurrent prison terms of 46 months to 75 years for felon-in-possession and CCW, both consecutive to the mandatory 10-year sentence for felony-firearm, third-offense. The judge assigned 15 points to OV 19 (interference with administration of justice) based on her belief that defendant committed perjury when he testified on his own behalf at trial, and that defendant had prevailed upon the defense witness to fabricate his testimony. The judge did not articulate any specific facts to support those beliefs. The judge also provoked an exchange with defendant at sentencing in which the judge, among other things, repeatedly called the defendant a clown. The Court of Appeals affirmed in an unpublished opinion. The Supreme Court has directed oral argument on defendant’s application for leave to appeal to address: (1) whether the defendant is entitled to a new trial based on the trial judge’s comments to the jury in lieu of the standard “deadlocked jury” instruction, M Crim JI 3.12; (2) whether Offense Variable 19 (OV 19), MCL 777.49, was improperly assigned 10 points for interference with the administration of justice, see *People v Hardy*, 494 Mich 430, 438 (2013), and *People v Adams*, 430 Mich 679, 689 (1988); (3) if OV 19 was misscored, whether the defendant is entitled to resentencing before a different judge based on the judge’s verbal exchange with the defendant at sentencing; and (4) whether he is entitled to resentencing irrespective of the scoring of Offense

Variable 19, MCL 777.49. See, e.g., *People v Pennington*, 323 Mich App 452 (2018).

[MOAA 155276](#)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Jon Wojtala

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

DIALLO CORLEY,
Defendant-Appellant.

Craig Daly

A jury convicted defendant of assault with intent to murder and other offenses for shooting Calvin Wray. The Court of Appeals remanded the case to the trial court for an evidentiary hearing on whether defendant should be granted a new trial based on newly discovered evidence. At the evidentiary hearing, newly discovered witness Tarryl Johnson gave a description of the shooting that was significantly different than the description given by the victim at trial and that would tend to show that defendant was not the shooter. The trial judge denied defendant’s motion for new trial, emphasizing that Johnson had a criminal record and could be impeached with his prior armed robbery conviction at a retrial. The Court of Appeals affirmed in an unpublished opinion, with one judge dissenting. The Supreme Court has ordered oral argument on defendant’s application for leave to appeal to address whether the trial court abused its discretion by declining to grant a new trial on grounds of newly discovered evidence, and in particular, whether the trial court erred in concluding that the newly discovered evidence would not make a different result probable on retrial.

[MOAA 156077](#)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Linus Banghart-Linn
Jennifer Bruggeman

v (Appeal from Ct of Appeals)
(Lenawee – Noe, M.)

DAVID ROSS AMES,
Defendant-Appellant.

Marilena David-Martin

Defendant pleaded guilty to second-degree home invasion and larceny in a building. The trial court sentenced defendant to serve prison terms of 5 to 15 years for the home invasion and 2½ to 4 years for the larceny. The sentencing guidelines ranges were 36 to 71 months and zero to 17 months, respectively. On appeal, in light of *People v Lockridge*, 498 Mich 358 (2015), defendant challenged the continuing validity of the first sentence of MCL 769.34(10)—“If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant’s sentence.” The Court of Appeals denied defendant’s delayed application for leave to appeal for lack of merit in

the grounds presented. The Supreme Court has ordered oral argument on defendant's application for leave to appeal to address whether MCL 769.34(10) has been rendered invalid by the decision in *Lockridge*, to the extent that the statute requires the Court of Appeals to affirm sentences that fall within the applicable guidelines range "absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence." See *People v Schrauben*, 314 Mich App 181, 196 (2016).

-MSC-