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Michigan Supreme Court Announces January 6-7, 2021
Oral Arguments Schedule

LANSING, MI, December 21, 2020 —The Michigan Supreme Court announced that oral arguments in eleven cases will be heard on Wednesday, January 6, and Thursday, January 7, 2021, on the 6th floor of the Hall of Justice. The Court will convene at 9:30 a.m. via Zoom and attorneys for the parties have all agreed to argue their cases via Zoom. The Courtroom will be closed to the public. The schedule of arguments is posted on the Supreme Court's oral arguments homepage.

Oral arguments will be livestreamed on the Court's YouTube page. Follow the Court on Twitter to receive regular updates as cases are heard.

These brief accounts may not reflect the way that some or all of the Court's seven justices view the case. The attorneys may also disagree about the facts, issues, procedural history, and significance of this case. For further details, please contact the attorneys.

Wednesday, January 6, 2021
Morning Session – 9:30 a.m.

No. 1 159450 (20-minute arguments per side)
LAW OFFICES OF JEFFREY SHERBOW, PC, — James Gross
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Oakland – Alexander, J.)

FIEGER & FIEGER, PC, d/b/a FIEGER, FIEGER, KENNEY & HARRINGTON, PC, — Sima Patel
Defendant-Appellant.

The defendant law firm agreed to pay the plaintiff, an attorney, a referral fee with regard to four clients who were all injured in the same motor vehicle accident. After the defendant obtained a settlement of approximately $10.5 million dollars, it refused to pay the referral fee and the plaintiff filed suit. The defendant responded by arguing that the referral fee agreement was unenforceable as contrary to public policy because it did not comply with Michigan Rule of Professional Conduct (MRPC) 1.5(e), which provides that a division of a fee between lawyers who are not in the same firm may be made only if the client is advised of and does not object to the participation of all the lawyers involved. The case proceeded to a jury trial, where the trial court instructed the jury that the plaintiff had to prove by a preponderance of the evidence that

each client was his client in order for him to recover in relation to that client. The jury returned a verdict finding that only one client was the plaintiff's client. The Court of Appeals, in a published opinion, held that the trial court reversibly erred in its instructions and verdict form. The Supreme Court has granted leave to appeal to address: (1) whether MRPC 1.5(e) requires the client to have an attorney-client relationship with all participating lawyers; (2) if so, what are the parameters of such relationship and how is it formed; (3) which party carries the burden with respect to a contract's compliance with MRPC 1.5(e), see *Palenkas v Beaumont Hosp*, 432 Mich 527, 548-550 (1989); and (4) if an attorney-client relationship with all participating lawyers is required under MRPC 1.5(e), whether reversal is required in this case. See MCR 2.613(A); *Cox v Bd of Hosp Managers for City of Flint*, 467 Mich 1, 15 (2002).

MOAA 159371, 159373 (15-minute arguments per side)

159371

PEOPLE OF THE STATE OF MICHIGAN, Scott Shimkus
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Ingham – Alderson, L.)

GERALD MAGNANT, Salem Samaan
Defendant-Appellant.

159373

PEOPLE OF THE STATE OF MICHIGAN, Scott Shimkus
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Ingham – Alderson, L.)

JOHN FRANCIS DAVIS, Walter Piszczatowski
Defendant-Appellant.

The defendants are nonsupervisory employees of the Keweenaw Bay Indian Community (KBIC). Police stopped them as they drove a KBIC-owned truck pulling a utility trailer from the tribe's reservation in Baraga to the tribe's gas station in Marquette. Inside the trailer were 56 boxes of cigarettes. The prosecution charged the defendants with violating MCL 205.428(3), which provides that "[a] person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes" is guilty of a five-year felony. The prosecution alleges that the defendants acted "contrary to this act" by transporting cigarettes without the transporter's license required by MCL 205.423(1). The district court bound the defendants over for trial, reasoning that the prosecution must prove that the defendants knew they were transporting cigarettes, but need not prove that they knew they were doing so "contrary to this act[.]" The circuit court upheld the district court's ruling and denied the defendants' joint motion to quash. The circuit court also denied the defendants' motion to dismiss based on their claim that the Tobacco Products Tax Act (TPTA) failed to provide sufficient notice that they were required to obtain a transporter's license. The Court of Appeals affirmed in a 2-1 unpublished opinion. The Supreme Court has ordered oral argument on the application to address: (1) whether MCL 205.428(3) requires proof that the defendants knew they were transporting cigarettes in a manner "contrary to" the TPTA, MCL 205.421 *et seq*., see generally *Rehaif v United States*, 588 US ___; 139 S Ct 2191 (2019); *Rambin v Allstate Ins Co*, 495 Mich 316, 327-328 (2014); (2) whether

nonsupervisory employees fall within the definition of "transporter" under MCL 205.422(y); and (3) if so, whether the TPTA's definition of "transporter" satisfies due process by putting the defendants on fair notice of the conduct that would subject them to punishment, see *People v Hall*, 499 Mich 446, 461 (2016).

MOAA 160060 (15-minute arguments per side)

PEOPLE OF THE STATE OF MICHIGAN, Mark Sanford
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Berrien – Pasula, A.)

JUAN MARTINEZ, III, John Moritz
Defendant-Appellant

The sixteen-year-old complainant accused the defendant, her mother's boyfriend, of touching her breasts and digitally penetrating her. The defendant sought to admit evidence that the complainant had threatened to falsely accuse her biological father of touching her. The prosecution filed a motion in limine to exclude the evidence, arguing that it was inadmissible hearsay. The trial court granted the prosecution's motion, agreeing that the evidence was inadmissible hearsay. The case went to trial and the defendant was convicted of third-degree and fourth-degree criminal sexual conduct. The Court of Appeals, in a 2-1 unpublished opinion, affirmed the defendant's convictions. The Supreme Court has ordered oral argument on the application to address: (1) whether the trial court erred by granting the prosecution's motion in limine to bar the defendant from presenting evidence of an alleged prior threat by the complainant to report an assault; and (2) if so, whether the error was prejudicial.

No. 2 160012 (20-minute arguments per side)

Justice Bernstein is not participating

HASSAN M. AHMAD, Philip Ellison
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Ct of Claims – Borrello, S.)

UNIVERSITY OF MICHIGAN, Timothy Lynch
Defendant-Appellant.

In accordance with an agreement between a donor of personal papers and the University of Michigan's Bentley Library, several boxes of donated documents were designated to be closed to view for 25 years. The plaintiff filed a request under Michigan's Freedom of Information Act (FOIA) asking for the release of materials that were restricted under the agreement. After the defendant denied the plaintiff's FOIA request, the plaintiff sued in the Court of Claims, seeking access to the documents. The defendant moved for summary disposition under MCR 2.116(C)(8), arguing that the plaintiff failed to state a claim for release of a "public record" under the FOIA because the documents do not meet the definition of a public record in MCL 15.232(i). The trial court granted summary disposition in favor of the defendant, but the Court of Appeals reversed in an unpublished opinion, holding that the documents are a "public record" under the statutory definition. The Supreme Court has granted leave to appeal to address

whether the documents sought by the plaintiff are within the definition of "public record" in MCL 15.232(i).

Wednesday, January 6, 2021
Afternoon Session – t/b/d

MOAA 160457 (15-minute arguments per side)
In re T.J. DIEHL, Minor.

PEOPLE OF THE STATE OF MICHIGAN, Jeffrey Kaelin
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Oakland – Valentine, V.)

T.J. DIEHL, Hugh Marshall
Defendant-Appellee.

A referee authorized three juvenile delinquency petitions against the 12-year-old respondent in a span of several months. In Petition #1, the respondent pled no contest to domestic violence against his adoptive mother. The family court accepted the plea and placed the respondent on probation. In Petitions #2 and #3, the respondent offered no contest pleas to domestic assault and larceny in a building. The family court did not accept either of those pleas and instead took both matters under advisement. Over the prosecution's objection, the family court ultimately "unauthorized" Petitions #2 and #3 and removed them from the adjudicative process. The family court reasoned that it would not serve the best interests of the respondent or the public to add more adjudications to the respondent's juvenile record when no additional services could be provided beyond what was ordered with respect to Petition #1. The Court of Appeals affirmed the family court in a published opinion. The Supreme Court has ordered oral argument on the application to address: (1) whether the Juvenile Code, MCL 712A.1 *et seq*., allows a family court to revoke its previous authorization of a juvenile delinquency petition over the objection of the prosecution; (2) whether MCL 780.786b provides family courts with the independent authority to remove an already authorized delinquency matter from the adjudicative process without the prosecution's consent; (3) whether the family court's decision to "unauthorize" two delinquency petitions encroached on the prosecution's charging authority in violation of the Separation of Powers Clause, Const 1963, art 3, § 2; and (4) to the extent that the family court erred, whether that error was harmless, MCR 3.902(A); MCR 2.613.

No. 3 160355 (20-minute arguments per side)
Justice Cavanagh is not participating

JENNIFER BUHL, Christopher Schneider
Plaintiff-Appellant,

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

CITY OF OAK PARK, Christian Huffman
Defendant-Appellee.

After twisting her ankle on the defendant city's sidewalk, the plaintiff sued, claiming that the defendant failed to observe its duty to maintain its sidewalk in reasonable repair under the defective sidewalk exception to governmental immunity, MCL 691.1402a. By the time the plaintiff brought her suit, but after she had fallen, the Legislature had amended MCL 691.1402a to add a revised subsection (5), allowing municipalities to assert "open and obvious" as a defense in sidewalk defect cases. The defendant moved for summary disposition under MCR 2.116(C)(10), arguing that the defect in the sidewalk was open and obvious. The trial court determined that the statutory amendment applied retroactively, barring the plaintiff's claim. The Court of Appeals, in a 2-1 published opinion, affirmed the trial court, holding that the statutory amendment applied retroactively. The Supreme Court has granted leave to appeal to address: (1) whether the Court of Appeals erred in concluding that the January 2017 amendment to MCL 691.1402a(5), see 2016 PA 419, applies retroactively; (2) whether 2016 PA 419 "attaches a new disability with respect to transactions or considerations already past," *In re Certified Questions from US Court of Appeals for the Sixth Circuit*, 416 Mich 558, 571 (1982); (3) whether the Court of Appeals erred in creating and applying a "*Brewer* restoration rule," in determining that 2016 PA 419 applies retroactively, see *Brewer v A D Transp Express, Inc*, 486 Mich 50 (2010); and (4) whether it makes a difference that the amendment was enacted before the plaintiff filed her complaint when the amended statute states, "In a civil action, a municipal corporation . . . may assert . . . a defense that the condition was open and obvious." MCL 691.1402a(5).

Thursday, January 7, 2021
Morning Session – 9:30 a.m.

MOAA 159709 (15-minute arguments per side)

Justice Zahra is not participating

PEOPLE OF THE STATE OF MICHIGAN, Mary Cretu
Plaintiff-Appellee,

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

CHRISTOPHER LOUIS SINDONE, Kristina Dunne
Defendant-Appellant.

Following a bench trial, the trial court found the defendant guilty of second-degree arson, MCL 750.73, and preparation to burn a dwelling, MCL 750.79(1)(d)(vi), for setting fire to his estranged wife's mobile home. The trial court sentenced defendant as a third-offense habitual offender to 12 to 40 years in prison for second-degree arson and 5 to 10 years in prison for preparation to burn, with the two sentences running concurrently. The Court of Appeals, in a 2-1 unpublished opinion, affirmed the defendant's convictions but vacated his sentences and remanded for resentencing due to errors in the scoring of the guidelines minimum sentence range. Court of Appeals Judge Shapiro concurred in part and dissented in part, explaining that he would have vacated the defendant's conviction for preparation to burn a dwelling on double jeopardy grounds. The Supreme Court has ordered oral argument on the application to address whether the defendant's convictions under MCL 750.73 and MCL 750.79(1)(d)(vi) violate double jeopardy. The parties were specifically directed to address: (1) whether the Legislature expressed a clear intent to allow or disallow dual convictions for both crimes based on the same conduct, and (2) if not, whether the same-elements test requires vacating the lesser conviction. See *People v Miller*, 498 Mich 13, 19 (2015).

MOAA 160436 (15-minute arguments per side)

PEOPLE OF THE STATE OF MICHIGAN, Joshua Miller
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Oakland – Anderson, M.)

MUHAMMAD ALTANTAWI, Carole Stanyar
Defendant-Appellant.

The defendant is awaiting trial for first-degree murder for the death of his mother when the defendant was 16 years old. He sought to suppress the statement he gave to police officers at the family home, arguing that he was subjected to a custodial interrogation because there was a police-dominated atmosphere within the home. The defendant argued that the officers should have advised him of his *Miranda* rights before questioning him. The defendant also sought to suppress evidence of images depicted on a recording from the home's security camera. The trial court denied the defendant's motions. The Court of Appeals affirmed in a 2-1 unpublished opinion. The Supreme Court has ordered oral argument on the application to address whether the juvenile defendant was subjected to a "custodial interrogation" without being advised of his *Miranda* rights. *Miranda v Arizona*, 384 US 436, 444 (1966).

MOAA 159857 (15-minute arguments per side)

LINDA RIVERA, Kevin Kelly
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Saginaw – McGraw, P.)

SVRC INDUSTRIES, INC., Kailen Christine Piper
Defendant-Appellee.

The plaintiff was discharged by her employer after she communicated with a supervisor and the company's attorney about threats made by another employee. She claimed retaliation in violation of the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq*., based on her communications with a supervisor about her desire to report the threats to the police; retaliation in violation of the WPA because she informed the defendant's attorney about the threats and attorneys are considered public bodies; and retaliation in violation of public policy because she wanted to report unlawful threats to the police and refused to conceal what amounted to a violation of the Michigan Anti-Terrorism Act. The trial court denied the defendant's motion for summary disposition, but the Court of Appeals, in a published opinion, reversed and remanded the case to the trial court for entry of an order granting summary disposition to defendant on all counts. The Supreme Court has ordered oral argument on the application to address: (1) whether the record supports the plaintiff's contention that her communication with the defendant's chief operating officer demonstrated that she was "about to report" a violation or a suspected violation of a law, see MCL 15.362; (2) whether the plaintiff's communications with the defendant's counsel constituted a "report" pursuant to MCL 15.362 where (a) the defendant's counsel initiated contact with the plaintiff (rather than the plaintiff contacting him), and (b) the defendant's counsel was aware of the plaintiff's allegations prior to their conversation; (3) whether the WPA is the plaintiff's exclusive remedy in this case; and (4) whether the record supports the plaintiff's contention that her protected activity caused her firing, that is, whether

the plaintiff has sufficient evidence beyond the temporal proximity of the events to show causation, see *Wurtz v Beecher Metro Dist*, 495 Mich 242 (2014).

MOAA 160242 (15-minute arguments per side)

KEITH BRONNER,
Plaintiff,
and

ANGELS WITH WINGS TRANSPORT, LLC,
Intervening Plaintiff,

v (Appeal from Ct of Appeals)
(Wayne – Ewell, E.)

CITY OF DETROIT, Charles Raimi
Defendant/Third-Party Plaintiff-
Appellant,
and

GFL ENVIRONMENTAL USA, INC., f/k/a RIZZO ENVIRONMENTAL SERVICES, Anthony Caffrey
Third-Party Defendant-Appellee.

The plaintiff was injured while he was a passenger on a Detroit city bus that was hit by a garbage truck owned by GFL Environmental USA, Inc. The City, a self-insured entity under the no-fault act, paid the plaintiff personal protection insurance (PIP) benefits. The City had a trash collection services contract with GFL that contained an indemnification provision. The City sued GFL for indemnification of the PIP benefits paid to the plaintiff as a result of GFL's driver's negligence. Both GFL and the City moved for summary disposition. The trial court ruled that the City was contractually entitled to indemnification and granted the City's motion and denied GFL's motion. The Court of Appeals reversed in an unpublished opinion, concluding that because the indemnification provision is unenforceable under the no-fault act, the City is precluded from obtaining indemnification from GFL. The Supreme Court has ordered oral argument on the application to address whether the Court of Appeals erred in holding that the no-fault insurance act, MCL 500.3101 *et seq*., precluded the City from seeking contractual indemnification from GFL for the City's payment of PIP benefits.

MOAA 159948 (15-minute arguments per side)

Chief Justice McCormack is not participating

PEOPLE OF THE STATE OF MICHIGAN, Hilary Georgia
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(St. Clair – Adair, J.)

TERRY LEE CEASOR, David Moran
Defendant-Appellant

Following a jury trial in 2005, the defendant was convicted of first-degree child abuse and was sentenced to 2 to 15 years in prison in a case alleging shaken baby syndrome. The conviction was affirmed on appeal, and the defendant was denied relief after filing a motion for relief from judgment. The defendant pursued habeas corpus relief in federal court, and the United States

Court of Appeals for the Sixth Circuit held in 2016 that the defendant's appellate counsel performed deficiently on direct appeal by not requesting an evidentiary hearing on the issue whether trial counsel was ineffective for failing to retain an expert witness. The federal district court, on remand, ordered the Michigan Court of Appeals to grant the defendant a new direct appeal of right. The case went back to the trial court on a motion for new trial. Following an evidentiary hearing, the trial court denied the motion, and the Court of Appeals affirmed the trial court in an unpublished opinion. The Supreme Court has ordered oral argument on the application to address whether the defendant was denied the effective assistance of trial counsel due to counsel's failure to seek funds from the circuit court to hire an expert witness or to otherwise obtain and present the testimony of an expert witness.

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