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Michigan Supreme Court Announces November 10 & 12, 2020
Oral Arguments Schedule

LANSING, MI, October 16, 2020 —The Michigan Supreme Court announced that oral arguments in eleven cases will be heard on Tuesday, November 10 and Thursday, November 12, 2020. The Court will convene at 9:30 a.m. in the Supreme Court courtroom, located on the sixth floor of the Hall of Justice. The courtroom will not be open to the public. The schedule of arguments is posted on the Supreme Court's oral arguments homepage.

Follow the Court on Twitter to receive regular updates as cases are heard.

This brief account 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.

Tuesday, November 10, 2020
Morning Session – 9:30 a.m.

MOAA 160263-4 (20-minute arguments per side)
160263

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	Heidi Williams
v (Appeal from Ct of Appeals) (Saginaw – Boes, J.)	
DANE RICHARD KRUKOWSKI, Defendant-Appellant.	Jason Eggert

160264

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	Heidi Williams
v (Appeal from Ct of Appeals) (Saginaw – Boes, J.)	
CODIE LYNN STEVENS, Defendant-Appellant.	Robert Dunn

Defendant Dane Krukowski and defendant Codie Lynn Stevens were the parents of RK, an infant child. While Krukowski was giving RK a bath, RK struck his head on the bathtub. The

defendants did not immediately seek professional medical treatment for RK, but applied a cold compress. There was conflicting evidence as to whether Stevens told RK's doctor about the bathtub incident at a regularly scheduled well-visit two days later. Two weeks later, RK began vomiting excessively. The next morning, the defendants took RK to the hospital when it appeared that he was having a seizure. A CAT showed that RK's brain was bleeding. He also had multiple rib fractures, ongoing seizure activity, and retinal hemorrhages. A jury convicted each defendant, as charged, of second-degree child abuse. The Court of Appeals reversed and remanded for judgments of acquittals, holding that there was insufficient evidence to support the convictions. The Supreme Court has ordered oral argument on the application to address: (1) whether there is sufficient evidence for a rational juror to conclude beyond a reasonable doubt that the defendants committed the offense of second-degree child abuse, MCL 750.136b(3)(a) and MCL 750.136b(3)(b); and (2) whether the phrase "willful abandonment" in MCL 750.136b(1)(c) encompasses a parent's failure to timely seek professional medical care for his or her child.

MOAA 159612 (15-minute arguments per side)

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, — Amy Somers

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

DEXTER BURRELL TAYLOR, Defendant-Appellant. — William Branch

The defendant was convicted by a jury of first-degree criminal sexual conduct and was sentenced to prison for 37 to 80 years. Among other things, the defendant argued on appeal that the trial court abused its discretion by allowing the prosecution to introduce evidence of a prior sexual assault. The Court of Appeals affirmed in an unpublished opinion. The Supreme Court has ordered oral argument on the application to address: (1) whether the other-acts evidence offered to show a common plan, scheme, or system contained a "striking similarity" to the charged act as required by *People v Denson*, 500 Mich 385, 403 (2017); (2) whether the other-acts evidence was admissible under the "doctrine of chances," see *People v Mardlin*, 487 Mich 609, 616-617 (2010); and (3) if the evidence was not offered for a proper purpose, whether its admission was harmless.

No. 3 159346 (20-minute arguments per side)

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, — Deborah Blair

v (Appeal from Ct of Appeals) (Wayne – Heise, C.)

JACQUES JEAN KABONGO, Defendant-Appellant. — Sheldon Halpern

The defendant was charged with carrying a concealed weapon (CCW) and was tried before a Wayne County jury. During jury selection, the trial court overruled the defendant's objection to

the prosecution's use of three peremptory challenges to remove African-American jurors from the jury panel. The trial court also precluded, as racially motivated, the defense attempt to remove a Caucasian juror. The jury convicted the defendant of CCW, and the trial court sentenced him to one year of nonreporting probation and 50 hours of community service. The Court of Appeals affirmed in an unpublished per curiam opinion. The Supreme Court has granted leave to appeal to address: (1) whether the prosecution's exercise of a peremptory challenge against prospective juror no. 2 violated *Batson v Kentucky*, 476 US 79 (1986); (2) whether the trial court erroneously precluded the defendant from exercising a peremptory challenge against prospective juror no. 5; (3) if so, whether such an error should be subject to automatic reversal or harmless error review, *Rivera v Illinois*, 556 US 148, 162 (2009) (holding that a trial court's erroneous denial of a defendant's peremptory challenge, standing alone, is not a structural error under the federal constitution requiring automatic reversal, but that "[s]tates are free to decide, as a matter of state law, that a trial court's mistaken denial of a peremptory challenge is reversible error *per se*") and compare, e.g., *People v Bell*, 473 Mich 275, 292-295 (2005) (stating in arguable dictum that harmless error review applies to such errors) with *Hardison v State*, 94 So 3d 1092, 1101 & n 37 (Miss, 2012) (plurality opinion) (citing "[a]t least five states" that have adopted an automatic reversal rule as a matter of state law and following those states); and (4) if so, whether reversal is warranted in this case.

No. 4 159981 (20-minute arguments per side)

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, — David Wallace

v (Appeal from Ct of Appeals) (Huron – Prill, G.)

VICTORIA CATHERINE PAGANO, Defendant-Appellant. — Michael Horowitz

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The defendant is awaiting trial on charges of operating a motor vehicle while intoxicated with children in her vehicle and open intoxicants in a motor vehicle. The stop of her vehicle was based strictly on an unidentified 911 caller's report that the defendant was yelling at her children, was obnoxious, appeared to be intoxicated, and then drove away, coupled with an officer's confirmation a little less than half an hour later that her vehicle matched the make, model, color, and license plate number reported by the 911 caller and was in the approximate location reported by the caller. The district court granted the defendant's motion to suppress all of the evidence secured during the stop, and the circuit court affirmed that decision. But the Court of Appeals reversed in an unpublished opinion, holding that less information is required to justify a traffic stop when the informant's tip relates to potentially dangerous driving. The Supreme Court has granted leave to appeal to address whether the 911 call relayed to the police provided reasonable suspicion that the defendant was intoxicated so as to justify the stop of her vehicle. See *Alabama v White*, 496 US 325 (1990), *Florida v JL*, 529 US 266 (2000), and *Navarette v California*, 572 US 393 (2014).

Tuesday, November 10, 2020
Afternoon Session – t/b/d

MOAA 159692 (15-minute arguments per side)

DONNA LIVINGS, — Christopher Baratta

Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Macomb – Servitto, E.)

SAGE'S INVESTMENT GROUP, LLC, Eric Conn
Defendant-Appellant,
and

T & J LANDSCAPING & SNOW REMOVAL, INC., and GRAND DIMITRE'S OF EASTPOINTE FAMILY DINING,
Defendants.

The plaintiff was injured on her way into work when she slipped and fell in the defendant's parking lot. The plaintiff filed a premises liability action, and the defendant filed a motion for summary disposition, arguing that it did not have possession and control of the premises, and that the condition was open and obvious and was not effectively unavoidable. The trial court denied the motion. The Court of Appeals affirmed in a 2-1 unpublished opinion. The majority held that the defendant was in possession and control of the premises, that the condition was open and obvious, and that there was a question of fact whether the condition was effectively unavoidable. The Supreme Court has ordered oral argument on the application to address: (1) whether the plaintiff's employment is a relevant consideration in determining whether a condition is effectively unavoidable, *Hoffner v Lanctoe*, 492 Mich 450 (2012), and *Perkoviq v Delcor Homes-Lake Shore Pointe Ltd*, 466 Mich 11 (2002); and (2) whether there was a question of fact concerning whether the parking lot constituted an effectively unavoidable condition.

No. 2 158751 (30-minute arguments per side)
COUNCIL OF ORGANIZATIONS AND OTHERS FOR EDUCATION ABOUT PAROCHIAID, AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN, MICHIGAN PARENTS FOR SCHOOLS, 482FORWARD, MICHIGAN ASSOCIATION OF SCHOOL BOARDS, MICHIGAN ASSOCIATION OF SCHOOL ADMINISTRATORS, MICHIGAN ASSOCIATION OF INTERMEDIATE SCHOOL ADMINISTRATORS, MICHIGAN SCHOOL BUSINESS OFFICIALS, MICHIGAN ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS, MIDDLE CITIES EDUCATION ASSOCIATION, MICHIGAN ELEMENTARY AND MIDDLE SCHOOL PRINCIPALS ASSOCIATION, KALAMAZOO PUBLIC SCHOOLS and KALAMAZOO PUBLIC SCHOOLS BOARD OF EDUCATION, Phillip DeRosier
Plaintiffs-Appellants,

v (Appeal from Ct of Appeals)
(Ct of Claims – Stephens, C.)

STATE OF MICHIGAN, GOVERNOR, DEPARTMENT OF EDUCATION, and Eric Restuccia

SUPERINTENDENT OF PUBLIC INSTRUCTION,
Defendants-Appellees.

Amicus Curiae Attorney General — Dana Nessel (5 mins)
Amicus Curiae Michigan Catholic Conference — Lori McAllister (10 mins)

In MCL 388.1752b, the Legislature allocated $2.5 million from the general fund to reimburse nonpublic schools for the cost of complying with health, safety, and welfare requirements mandated by state law or administrative rule. The plaintiffs filed a lawsuit in the Court of Claims, alleging that MCL 388.1752b violates Const 1963, art 8, § 2, which bars the payment of public monies to aid or maintain nonpublic schools. The Court of Claims held that MCL 388.1752b violates art 8, § 2, and enjoined the defendants from distributing any funds under the statute. In *Council of Orgs & Others for Ed about Parochiaid v Michigan*, 326 Mich App 124 (2018), the Court of Appeals, in a 2-1 opinion, reversed the Court of Claims and remanded the case to that court for further proceedings. The Supreme Court has granted leave to appeal to address whether MCL 388.1752b violates Const 1963, art 8, § 2. After adjourning oral argument and holding this case in abeyance for the decision in *Espinoza v Montana Dep't of Revenue*, 591 US ___; 140 S Ct 2246; 207 L Ed 2d 679 (2020), the Supreme Court has rescheduled this case for oral argument.

Thursday, November 12, 2020
Morning Session – 9:30 a.m.

MOAA 159690 (15-minute arguments per side)
In re PETITION OF ATTORNEY GENERAL FOR SUBPOENAS.

ATTORNEY GENERAL,
Petitioner-Appellant, — Michele Wagner-Gutkowski

v (Appeal from Ct of Appeals)
(Ingham – Draganchuk, J.)

VERNON E. PROCTOR, M.D.,
Respondent-Appellee. — J. Nicholas Bostic

The Department of Licensing and Regulatory Affairs, through the Attorney General, filed a petition in the Ingham Circuit Court, seeking authorization to access the medical records of 11 of Dr. Vernon Proctor's patients. The petition explained that the Department had initiated an investigation of Dr. Proctor's treatment of patients and/or his controlled substance prescribing practices. It sought disclosure of patient records under MCL 333.16235 and 42 CFR 2.66. Without first holding a hearing, the circuit court issued an order authorizing the subpoenas. Dr. Proctor appealed to the Court of Appeals, which reversed the circuit court in a published opinion, holding that the circuit court failed to comply with federal law. The Supreme Court has ordered oral argument on the application to address: (1) whether the circuit court was required to hold a hearing before authorizing the disclosure of medical records under 42 CFR 2.66; (2) whether the circuit court erred when it determined that the petitioner established "good cause" and otherwise satisfied the criteria set forth in 42 CFR 2.64(d) and 42 CFR 2.64(e); and (3)

whether the circuit court erred in authorizing the disclosure of confidential patient communications under 42 CFR 2.63(a).

No. 1 158069, 158304 (30-minute arguments per side)
158069

LYNN PEARCE, Personal Representative of the ESTATE OF BRENDON PEARCE, Deceased,
Plaintiff-Appellant, — Joseph Collison

v (Appeal from Ct of Appeals)
(Eaton – Mauer, J.)

EATON COUNTY ROAD COMMISSION,
Defendant-Appellee, — Jonathan Koch
and

LAWRENCE BENTON, Personal Representative of the ESTATE OF MELISSA SUE MUSSER, Deceased, and PATRICIA JANE MUSSER,
Defendants.

158304

TIM EDWARD BRUGGER, II,
Plaintiff-Appellee, — Patrick Richards

v (Appeal from Ct of Appeals)
(Midland – Beale, M.)

MIDLAND COUNTY BOARD OF ROAD COMMISSIONERS,
Defendant-Appellant. — Jonathan Koch

These two cases will be argued together to address conflicting opinions by the Court of Appeals. In 2015, Brendon Pearce died in a motor vehicle accident, and his estate served a presuit notice on defendant Eaton County Road Commission in accordance with MCL 691.1404 of the governmental tort liability act. In 2013, plaintiff Tim Edward Brugger, II was injured in a motorcycle accident, and he served a presuit notice on defendant Midland County Board of Road Commissioners in accordance with MCL 691.1404. In 2016, the Court of Appeals issued an opinion in *Streng v Bd of Mackinac Co Rd Comm'rs*, 315 Mich App 449 (2016), lv den 500 Mich 919 (2016), holding that MCL 224.21(3), rather than MCL 691.1404, controls the timing and content of a presuit notice directed to a road commission. The trial courts in both cases denied the defendants' motions for summary disposition, finding that *Streng* should be applied prospectively only. In *Brugger v Midland Co Bd of Rd Comm'rs*, 324 Mich App 307 (2018), the Court of Appeals held that *Streng* applied prospectively only. But in *Estate of Brendon Pearce v Eaton Co Rd Comm*, 324 Mich App 549 (2018), the Court of Appeals applied *Streng* retroactively. The Supreme Court has granted leave to appeal in both cases to address: (1) whether *Streng v Bd of Mackinac Co Rd Comm'rs*, 315 Mich App 449 (2016), lv den 500 Mich 919 (2016), was correctly decided, and if so (2) whether *Streng* "clearly established a new principle of law" and thereby satisfied the threshold question for retroactivity set forth in *Pohutski v City of Allen Park*, 465 Mich 675, 696 (2002), compare *Pohutski*, 465 Mich at 696-

697 (citations omitted) ("Although this opinion gives effect to the intent of the Legislature that may be reasonably be inferred from the text of the governing statutory provisions, practically speaking our holding is akin to the announcement of a new rule of law, given the erroneous interpretations set forth in [*Hadfield v Oakland Co Drain Comm'r*, 430 Mich 139 (1988) and [*Li v Feldt (After Remand)*, 434 Mich 585 (1990)].") with *Wayne Co v Hathcock*, 471 Mich 445, 484 (2004) ("Our decision today [overruling *Poletown Neighborhood Council v Detroit*, 410 Mich 616 (1981)] does not announce a new rule of law, but rather returns our law to that which existed before *Poletown* and which has been mandated by our Constitution since it took effect in 1963."). See also *Chevron Oil v Huson*, 404 US 97, 106 (1971) (citations omitted) (holding that a decision establishes a new principle of law, such that it may be applied retroactively, if it "overrul[es] clear past precedent on which litigants may have relied . . ."); and if so (3) whether *Streng* should be applied retroactively under the "three factor test" set forth in *Pohutski*.

MOAA 158749, 158755-6 (15-minute arguments per side)

158749

BRYAN PUNTURO, FAWN PUNTURO, and B & A HOLDINGS, LLC, d/b/a PARKSHORE RESORT, LLC,
Plaintiffs-Appellees,

v (Appeal from Ct of Appeals)
(Grand Traverse – Power, T.)

BRACE KERN, — Jonathan Koch
Defendant-Appellant,
and

SABURI BOYER and DANIELLE KORT, f/k/a DANIELLE BOYER,
Defendants.

158755

BRYAN PUNTURO, FAWN PUNTURO, and B & A HOLDINGS, LLC, d/b/a PARKSHORE RESORT, LLC, — Jonathan Moothart
Plaintiffs-Appellees,

v (Appeal from Ct of Appeals)
(Grand Traverse – Power, T.)

BRACE KERN and SABURI BOYER,
Defendants,
and

DANIELLE KORT, f/k/a DANIELLE BOYER, — Gerald Zelenock
Defendant-Appellant.

158756

BRYAN PUNTURO, FAWN PUNTURO, and B & A HOLDINGS, LLC, d/b/a PARKSHORE — Jonathan Moothart

RESORT, LLC,
Plaintiffs-Appellees,

v (Appeal from Ct of Appeals)
(Grand Traverse – Power, T.)

BRACE KERN and DANIELLE KORT,
f/k/a DANIELLE BOYER,
Defendants,
and

SABURI BOYER, Gerald Zelenock
Defendant-Appellant.

Brace Kern, an attorney, on behalf of his clients, Saburi Boyer and Danielle Kort, filed a lawsuit alleging that Bryan Punturo engaged in extortion to coerce Boyer to pay him money in exchange for Punturo's promise not to compete with Boyer's parasailing business. Kern also reported the allegations to the Attorney General (AG), who filed a charge of felony extortion against Punturo. Kern, Boyer, and Kort were interviewed by the media about their lawsuit and the AG's extortion charge, and they made statements about the matter. After the civil and criminal cases were dismissed, Punturo and other plaintiffs sued Kern, Boyer, and Kort for defamation. The trial court, relying on *Bedford v Witte*, 318 Mich App 60 (2016), concluded that the statements were not privileged under the fair reporting privilege, MCL 600.2911(3), and that questions of fact remained as to other elements of the defamation claim. Consequently, the trial court denied the parties' motions for summary disposition. The Court of Appeals affirmed in an unpublished opinion. The Supreme Court has ordered oral argument on the application to address: (1) whether, as a threshold matter, the fair reporting privilege, MCL 600.2911(3) — which can only be invoked "in a libel action" — applies in a case in which the appellants are not the media companies that published the allegedly defamatory statements, but are instead the persons who furnished the oral statements to the media; (2) whether the Court of Appeals erred in holding that the appellants' allegedly defamatory statements to the media regarding the pending litigation were not protected under the fair reporting privilege; (3) whether *Bedford v Witte*, 318 Mich App 60 (2016), was wrongly decided; and (4) whether the standards for application of the statutory fair reporting privilege are different for statements made by an attorney or by a layperson-litigant.

MOAA 160034 (15-minute arguments per side)
PEOPLE OF THE STATE OF MICHIGAN, Heidi Williams
Plaintiff-Appellee,

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

ROBIN RICK MANNING, Amanda Rice
Defendant-Appellant.

In 1985, the defendant was convicted of first-degree murder and other crimes for his participation in a fatal shooting. He was sentenced to the mandatory term of life without parole (LWOP). He was 18 years and 3 months old when he committed the crimes. In 2018, the defendant filed a successive motion for relief from judgment, seeking resentencing under *Miller*

v Alabama, 567 US 460 (2012), in which the U.S. Supreme Court held that mandatory LWOP violates the Eighth Amendment's prohibition against cruel and unusual punishments when applied to offenders under the age of 18. In *Montgomery v Louisiana*, 136 S Ct 718 (2016), the U.S. Supreme Court held that *Miller* announced a new substantive constitutional rule and, therefore, was retroactive on state collateral review. The defendant argued in his successive motion for relief from judgment that *Miller* should be applied to him in light of new scientific evidence regarding brain development. The trial court denied the defendant's motion and the Court of Appeals dismissed his application for leave to appeal. The Supreme Court has ordered oral argument on the application to address: (1) whether the defendant's successive motion for relief from judgment is "based on a retroactive change in law," MCR 6.502(G)(2), where the law relied upon does not automatically entitle him to relief; and (2) if so, whether the United States Supreme Court's decisions in *Miller v Alabama*, 567 US 460 (2012), and *Montgomery v Louisiana*, 136 S Ct 718 (2016), should be applied to 18 year old defendants convicted of murder and sentenced to mandatory life without parole, under the Eighth Amendment to the United States Constitution or Const 1963, art 1, § 16, or both.

MOAA 160150 (15-minute arguments per side)

PEOPLE OF THE STATE OF MICHIGAN, Jerrold Schrotenboer
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Ionia – Sykes, R.)

ANTHONY MICHAEL OWEN, Edward Sternisha
Defendant-Appellant.

A sheriff's deputy conducted a traffic stop after the defendant drove 43 mph through what the deputy believed to be a 25-mph speed zone. During the stop, the deputy discovered evidence that led to the defendant's arrest for operating while intoxicated and carrying a concealed pistol while under the influence of alcohol. The defendant filed a pretrial motion to suppress the evidence obtained as a result of the traffic stop and to dismiss the case, arguing that because the speed limit was actually 55 mph, there was no lawful basis for the traffic stop. The district court found the controlling speed limit to be 55 mph and granted the defendant's motion to suppress. The circuit court affirmed the district court's speed-limit finding, but reversed its suppression ruling after concluding that the deputy had made a reasonable mistake of law regarding the applicable speed limit. After unsuccessfully seeking leave to pursue an interlocutory appeal to the Court of Appeals, the defendant entered a conditional guilty plea to the two charged misdemeanors that preserved his ability to pursue the suppression issue on appeal. The circuit court denied the defendant's subsequent application for leave to appeal. In its initial review of the case, the Court of Appeals denied leave to appeal for lack of merit, but the Supreme Court remanded the case to the Court of Appeals for consideration as on leave granted. On remand, the Court of Appeals issued an unpublished opinion holding that the traffic stop was unlawful because the deputy's mistaken belief that the speed limit was 25 mph lacked objective reasonableness. The Supreme Court has ordered oral argument on the application to address whether the arresting deputy made an objectively reasonable mistake of law regarding the applicable speed limit that justified the traffic stop of the defendant's vehicle. See *Heien v North Carolina*, 574 US 54 (2014).