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John Nevin, Communications Director
Ph: 517-373-0129 Twitter: @MISupremeCourt FB: facebook.com/misupremecourt

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Michigan Supreme Court Announces October 2019 Oral Arguments Schedule

LANSING, MI, September 25, 2019 —The Michigan Supreme Court announced that oral arguments in eleven cases will be heard October 2-3, 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, October 2, 2019
Morning Session - 9:30 a.m.

157688 – People of MI v Tiffany Reichard

Defendant Tiffany Reichard is awaiting trial in Jackson County for open murder. The prosecution alleges that defendant assisted her boyfriend in an armed robbery, and that while acting as lookout, the boyfriend fatally stabbed Matt Cramton. The trial court granted defendant's pretrial motion to raise duress as a defense to murder. On interlocutory review, the Court of Appeals reversed in a published opinion, agreeing with the prosecution that duress cannot be a defense to murder in any form. The Supreme Court has ordered oral argument on the defendant's application for leave to appeal to address whether the Court of Appeals correctly determined that duress is not an available defense to the charge of felony murder under any circumstances. See *People v Aaron*, 409 Mich 672 (1980); *Wright v State*, 402 So 2d 493, 498 n 8 (Fla App, 1981).

156622 – WA Foote Memorial Hosp v MI Assigned Claims Plan

In *Covenant Medical Center, Inc v State Farm Mutual Auto Ins Co*, 500 Mich 191 (2017), the Supreme Court held that a healthcare provider has no cause of action under the no-fault act against a no-fault insurer for recovery of personal protection insurance (PIP) benefits, thereby overruling inconsistent Court of Appeals caselaw. The issue in this case is whether *Covenant* applies retroactively to cases pending on direct review when it was issued. The Court of Appeals, in a published opinion, held that *Covenant* applies retroactively to this case and affirmed the trial court's grant of summary disposition in favor of defendants, albeit for different reasons than those stated by the trial court. The Court of Appeals held that *Spectrum Health Hospitals v Farm Bureau Mutual Ins Co of Mich*, 492 Mich 503 (2012), "effectively repudiated" application of the "threshold question" and the "three-factor test" that were addressed in *Pohutski v City of Allen Park*, 465 Mich 675, 696 (2002). The Supreme Court has ordered oral argument on plaintiff's application for leave to appeal to address: (1) whether *Covenant* should be applied to this case; (2) whether the Court of Appeals correctly concluded that *Pohutski* has been "effectively repudiated" in the context of judicial decisions involving statutory interpretation, see *Spectrum Health Hospitals v Farm Bureau Mutual Ins Co of Mich*, 492 Mich 503 (2012); *Wayne County v Hathcock*, 471 Mich 445, 484 n 98 (2004); and *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 587 n 57 (2005); and (3) if *Pohutski* has not been effectively repudiated, whether the *Pohutski* framework should have been applied in *Spectrum*. This case will be argued at the same session as *Jawad A Shah, MD, PC v State Farm Mutual Auto Ins Co*, No. 157951.

157951 – Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co

Plaintiffs provided healthcare services to a patient (George Hensley) who was insured under a no-fault policy with defendant insurer. Plaintiffs sued defendant for personal protection insurance (PIP) benefits under the no-fault act, but defendant filed a motion for summary disposition based on *Covenant Medical Center, Inc v State Farm Mutual Auto Ins Co*, 500 Mich 191 (2017). Plaintiffs responded that Hensley had assigned to them the right to recover PIP benefits from defendant, but defendant countered that an anti-assignment clause in its no-fault policy precluded Hensley from assigning his rights under the policy without defendant's approval. The trial court granted defendant's motion for summary disposition. The Court of Appeals reversed in a published opinion, holding that the anti-assignment clause is unenforceable under *Roger Williams Ins Co v Carrington*, 43 Mich 252 (1880). The Supreme Court has ordered oral argument on defendant's application for leave to appeal to address whether the anti-assignment clause precluded Hensley from assigning his right to recover PIP benefits to plaintiffs. This case will be argued at the same session as *WA Foote Memorial Hospital v Mich Assigned Claims Plan*, No. 156622.

Wednesday, October 2, 2019
Afternoon Session - 1:00 p.m.

157522 – Honigman Miller Schwartz & Cohn, LLP v Detroit

From 2010 to 2014, plaintiff law firm, Honigman Miller Schwartz & Cohn, LLP, reported, pursuant to § 23 of the Uniform City Income Tax Ordinance, MCL 141.623, that approximately 11% of its gross revenues were for "services rendered within the city." Defendant City of Detroit determined that this figure was closer to 50% of plaintiff's gross revenues and assessed the firm approximately $1.1 million in local taxes. Plaintiff filed a petition in the Michigan Tax Tribunal. Both parties moved for partial summary disposition pursuant to MCR 2.116(C)(10). Plaintiff contended that, although its services were performed in the city, they were delivered to clients outside the city, and thus, not "rendered within the city." Plaintiff took the position that the phrase "services rendered" in MCL 141.623 has a different meaning than the phrase "services performed" in MCL 141.622 because, when the Legislature uses different terms, it intends to ascribe different meanings to those terms. The defendant argued that the terms were synonymous and that because the services were performed within the city the revenues derived from those services were subject to city tax. The tax tribunal agreed with the defendant and granted its motion for partial summary disposition. The Court of Appeals reversed in a published decision, adopting plaintiff's argument. The Supreme Court has granted leave to appeal to address whether the Court of Appeals erred in its construction of the phrase "services rendered within the city" in § 23 of the Uniform City Income Tax Ordinance, MCL 141.623.

156189 – People of MI v Travis Sammons

A jury convicted defendant Travis Sammons and his codefendant Dominique Ramsey, Jr., of conspiracy to commit open murder for the fatal shooting of Humberto Casas. Independent eyewitnesses testified to the shooting. One eyewitness identified the vehicle in which the assailants had fled and in which defendant and his codefendant were found eleven minutes after the shooting. Another eyewitness positively identified defendant as the shooter in a lineup conducted at the police station hours after the shooting. Defendant and his codefendant were jointly tried, and the jury found both guilty of conspiracy to commit open murder. They each filed a motion for a directed verdict or a new trial. The trial court denied defendant's motion, holding that there was sufficient evidence to convict him of conspiracy to commit first-degree murder, but granted the codefendant's motion and acquitted him of conspiracy to commit murder. Defendant appealed. The Court of Appeals affirmed. The Supreme Court, after ordering the prosecuting attorney to respond to defendant's application for leave to appeal, has ordered oral argument on the application to address whether (1) the lineup identification procedure at the police station was impermissibly suggestive, see *People v Kurylczyk*, 443 Mich 289, 303-306 (1993); (2) if so, whether the identification was nonetheless sufficiently reliable to be admitted at trial, see *Perry v New Hampshire*, 565 US 228, 238-239 (2012); and (3) if improperly

admitted, whether it is more probable than not that the erroneous admission of the detective's identification testimony affected the outcome of the trial, see *People v Lukity*, 460 Mich 484, 496 (1999).

Thursday, October 3, 2019
Morning Session – 9:30 a.m.

157705 – Deborah Foster v Ray Foster

In 2008, the parties' consent judgment of divorce was entered, awarding plaintiff-wife 50% of defendant-husband's military retirement benefits, but no part of his military disability benefits, which are not considered marital property under federal law. Defendant thereafter became eligible for and began receiving increased disability benefits, which in turn reduced his retirement benefits and the amount plaintiff received. When defendant failed to make up the difference to plaintiff (as contemplated by the divorce judgment), the trial court held defendant in contempt of court and ordered him to make payments toward his arrearage. Defendant appealed, and the Court of Appeals affirmed, relying on *Megee v Carmine*, 290 Mich App 551, 574-575 (2010), which held that "a military spouse remains financially responsible to compensate his or her former spouse in an amount equal to the share of retirement pay ordered to be distributed to the former spouse as part of a divorce judgment's property division when the military spouse makes a unilateral and voluntary postjudgment election to waive the retirement pay in favor of disability benefits contrary to the terms of the divorce judgment." The Supreme Court remanded the case to the Court of Appeals for reconsideration in light of *Howell v Howell*, 581 US ___; 137 S Ct 1400; 197 L Ed 2d 781 (2017), which held that a state court may not order a veteran to indemnify a divorced spouse for the loss in the divorced spouse's portion of the veteran's retirement pay caused by the veteran's waiver of retirement pay to receive service-related disability benefits. On remand, the Court of Appeals again affirmed, holding that *Howell* did not overrule *Megee*. The Supreme Court has granted leave to appeal to address: (1) whether the principles of *Howell* apply to combat-related special compensation (CRSC), 10 USC 1413a; (2) if so, whether *Megee* remains good law in light of *Howell*; and (3) whether the Court of Appeals was correct in upholding the Dickinson Circuit Court's November 6, 2014, contempt order against defendant.

158854 – In re IM Long, Minor

The minor child was placed under a guardianship with his maternal grandmother when he was a few months old. When the child was nearly five years old, the guardian petitioned to terminate the parental rights of respondent father, who was imprisoned. At that time, the identity of the child's father was undetermined, but during proceedings on the petition, respondent was determined to be the child's biological father in September 2017. Respondent moved to dismiss the proceedings, arguing that jurisdiction was improper under MCL 712A.2(b)(2) because there was no indication that the guardian's home was

an unfit place for the child to live, and improper under MCL 712A.2(b)(6) because he had only recently been declared the child's legal father and had not been provided an opportunity to support and visit the child. Thus, according to respondent, the two-year period of failure to visit and support the child, as required to establish jurisdiction under MCL 712A.2(b)(6), was not met. The trial court held that it had jurisdiction under both MCL 712A.2(b)(2) and (6), and it terminated respondent's parental rights. In a published opinion, the Court of Appeals reversed the trial court's order assuming jurisdiction over the child and, consequently, the termination of respondent's parental rights. The Court of Appeals held that respondent had no legal obligation to visit or support the child during the two years before the guardian filed the petition seeking termination of parental rights. The Supreme Court has ordered oral argument on petitioner's application for leave to appeal to address: (1) whether the Court of Appeals clearly erred in reversing the trial court's decision to exercise jurisdiction over the minor child pursuant to MCL 712A.2(b)(2), where the child was living with a guardian and there was no evidence that the guardian's home was unfit, yet there was evidence that the respondent father is incarcerated and had a history of criminal conduct; (2) whether the Court of Appeals clearly erred in reversing the trial court's additional decision to exercise jurisdiction over the minor child pursuant to MCL 712A.2(b)(6), based on respondent father's conduct in the two years preceding the filing of the petition when he was a putative, not legal, father; and (3) whether the trial court's reliance on *In re LE*, 278 Mich App 1 (2008), was misplaced.

158296, 158298 – People of MI v Terrance Furline, People of MI v Alvin Jenkins, Jr.

Defendants Terrance Furline and Alvin Jenkins, Sr., set fire to a Flint home-improvement store as part of a scheme to distract employees while they stole high-priced merchandise. They returned at least one item from the Flint store to another home-improvement store in exchange for a gift card, which they intended to sell for cash. The next day, they attempted the same fire/theft scheme at a Saginaw home-improvement store. A store employee prevented the theft, and defendants were eventually arrested and charged with multiple felonies. Before trial, defendant Furline moved to sever his trial from that of codefendant Jenkins, arguing that Jenkins had given a statement to police identifying him (Furline) as the one who set the fire at the Saginaw store. Jenkins orally joined the motion. Furline argued that their defenses were mutually exclusive, and thus, severance was mandatory under *People v Hana*, 447 Mich 325 (1994). The trial court disagreed and denied the motion. Following a joint trial before a single jury, both defendants were convicted as charged. The Court of Appeals vacated defendants' convictions and sentences, reasoning that the trial court abused its discretion by denying Furline's motion to sever. The Supreme Court has ordered oral argument on defendants' applications for leave to appeal to address whether the Court of Appeals clearly erred in its application of the principles of *People v Hana*, 447 Mich 325 (1994), to the defendants' motions for separate trials.

Thursday, October 3, 2019
Afternoon Session - 1:00 p.m.

158102 – People of MI v Laricca Mathews

Defendant Laricca Mathews is awaiting trial for open murder arising out of the fatal shooting of her boyfriend, Gabriel Dumas. After shooting Dumas in the head, defendant called 911, attended to his head wound as instructed, and surrendered to the police when they arrived. She was arrested and taken to the police station, where she was interviewed twice. At the beginning of the interviews, she was advised in writing and orally that "before any questions are asked of you, you should know, . . . you have the right to a lawyer." Defendant agreed to speak with detectives and made statements that the prosecution wants to introduce at trial. Defendant moved to suppress her statements under *Miranda v Arizona*, 384 US 436 (1966), and the trial court granted her motion, ruling that the warnings failed to advise defendant that she had the right to have an attorney present before and during interrogation. The Court of Appeals denied the prosecution's application for interlocutory review for lack of merit in the grounds presented, with one judge indicating that she would grant leave to appeal. On appeal, the Supreme Court remanded the case to the Court of Appeals for consideration as on leave granted to consider whether either of the bases for suppression advanced by defendant in the trial court rendered the warnings in this case deficient under *Miranda*. See *People v Mathews*, 501 Mich 950 (2018). On remand, in a published split decision, the Court of Appeals affirmed, holding "that a warning preceding a custodial interrogation is deficient when the warning contains only a broad reference to the 'right to an attorney' that does not, when the warning is read in its entirety, reasonably convey the suspect's right to consult with an attorney and to have an attorney present during the interrogation." *People v Mathews*, 324 Mich App 416, 438 (2018). The Supreme Court has ordered oral argument on the prosecution's application for leave to appeal to address whether the warnings provided to the defendant prior to custodial interrogation "reasonably convey[ed]," *Florida v Powell*, 559 US 50, 60 (2010), to her the "right to consult with a lawyer and to have the lawyer with [her] during interrogation," *Miranda*, 384 US at 471.

158311 – Christie DeRuiter v Township of Byron

Plaintiff/counter-defendant Christie DeRuiter is a registered medical marijuana caregiver who started growing marijuana in a building zoned commercial, apparently in compliance with the requirements of the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq*. However, defendant/counter-plaintiff Byron Township's zoning ordinance only allows caregivers to grow medical marijuana as a home occupation, with a permit, in property zoned residential. DeRuiter received a letter from the township informing her that she was in violation of the zoning ordinance. She filed a complaint, and the township filed a counter-complaint. The trial court held that the zoning regulations were preempted by the MMMA, granted summary disposition to DeRuiter, and denied summary disposition to the township. The Court of Appeals affirmed in a

published opinion, holding that the zoning ordinance directly conflicts with the MMMA. The Supreme Court has ordered oral argument on the township's application for leave to appeal to address whether the township's zoning ordinance pertaining to the location of registered medical marijuana caregivers is preempted by the MMMA.

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