

STATE OF MICHIGAN

SUPREME COURT

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

-vs-

MARY ANN MCBRIDE,  
Defendant-Appellee,

\_\_\_\_\_ /qk

Supreme Court  
No.

Court of Appeals  
No. 271579 *apu 12-19-06*

Macomb Circuit  
No. 05-4049-FC

*P. Macermi*

133142

**PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

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**TABLE OF CONTENTS**

	Page
TABLE OF CONTENTS.....	i
INDEX OF AUTHORITIES.....	ii
ISSUE PRESENTED.....	iii
JUDGMENT APPEALED FROM AND RELIEF SOUGHT.....	1
STATEMENT OF MATERIAL PROCEEDINGS AND FACTS .....	2
<b>ISSUE.....</b>	<b>4</b>
<b>THE TRIAL COURT REVERSIBLY ERRED IN CONCLUDING THAT THE HEARING-IMPAIRED DEFENDANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HER <i>MIRANDA</i> RIGHTS AND GRANTING HER MOTION TO SUPPRESS HER STATEMENTS TO RPD DETECTIVES.....</b>	<b>4</b>
RELIEF REQUESTED.....	17

## INDEX OF AUTHORITIES

### Cases

<i>California v. Prysock</i> , 453 US 355; 101 SCt 2806; 69 LEd2d 696 (1981)	15
<i>Harris v. Riddle</i> , 551 F2d 936, 939 (CA 4, 1977) .....	11
<i>Moran v. Burbine</i> , 475 US 412; 106 SCt 1135 (1986) .....	11
<i>People v. Brannon</i> , 194 Mich App 121; 486 NW2d 83 (1992) .....	4, 9, 10
<i>People v. Cheatham</i> , 453 Mich 1; 551 NW2d 355 (1996) .....	10, 11
<i>People v. Daoud</i> , 462 Mich 621; 614 NW2d 152 (2000) .....	4, 10
<i>People v. Johnson</i> , 90 Mich App 415; 282 NW2d 340 (1979) .....	14, 15
<i>People v. McClure</i> , <i>supra</i> , 29 Mich.App. at 368, 185 N.W.2d at 429 .....	14
<i>People v. Truong</i> , 218 Mich App 325; 553 NW2d 692 (1996) .....	9

### Statutes

MCL § 393.505 .....	12
MCL § 750.316 .....	2

### Rules

MCR 7.302(B)(3) .....	1
MCR 7.302(B)(5) .....	1

**ISSUE PRESENTED**

**ISSUE**

**DID THE TRIAL COURT REVERSIBLY ERR IN CONCLUDING THAT THE HEARING-IMPAIRED DEFENDANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HER *MIRANDA* RIGHTS AND GRANTING HER MOTION TO SUPPRESS HER STATEMENTS TO RPD DETECTIVES?**

**Plaintiff-Appellant's Answer: "Yes".  
Defendant-Appellee's Answer: "No".**

## **JUDGMENT APPEALED FROM AND RELIEF SOUGHT**

The plaintiff/appellant, the People of the State of Michigan, seeks leave to appeal from the published opinion of the Michigan Court of Appeals (dated December 19, 2006) affirming the Macomb County Circuit Court's order suppressing inculpatory statements made by the defendant/appellee during a police interview. For the reasons stated below, the plaintiff/appellant submits that this published opinion is clearly erroneous and will cause material injustice. *See* MCR 7.302(B)(5). Moreover, as demonstrated below, the issue involves legal principles of major significance for this state's jurisprudence. *See* MCR 7.302(B)(3).

The plaintiff/appellant respectfully requests that this Honorable Court **GRANT** its Application for Leave to Appeal and **REVERSE** the decisions of the Michigan Court of Appeals and the Macomb County Circuit Court.

## STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

On April 25, 2005, the prosecution charged the hearing-impaired defendant/appellee, Mary Ann McBride, with Open Murder (MCL § 750.316) arising out of the death of her live-in boyfriend, Robert A. Adelsburg (“Mr. Adelsburg”), three days earlier at his home in Roseville. See Complaint and Warrant- Macomb CC No. 05-4049-FC. On August 31, 2005, 39<sup>th</sup> District Court Judge Marco A. Santia, after holding a preliminary examination, bound the defendant over to Macomb County Circuit Court to stand trial on this felony charge. See Bindover/Transfer After Preliminary Examination- Macomb CC No. 05-4049-FC

Judge Maceroni arraigned the defendant on the information on October 11, 2005. See Arraignment/Conference Court Disposition- Macomb CC No. 05-4049-FC. Subsequently, the defendant moved to suppress statements she made to RPD detectives during an interview at the police station on the morning of April 23, 2005, on the ground that she did not knowingly and intelligently waive her *Miranda*<sup>1</sup> rights. Judge Maceroni held a *Walker*<sup>2</sup> hearing on February 10, 2006. (Tr. 2-10-06, 3-101). The prosecution called one witness at the *Walker* hearing, RPD Detective Michael Demick (“Detective Demick”), who was present during the interview. (Tr. 2-10-06, 8-60). The defendant also called one witness, Yvonne Jones, an interpreter for deaf persons. (Tr. 2-10-06, 61-79). After

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<sup>1</sup> *Miranda v. Arizona*, 384 US 436; 86 Sct 1602 (1966).

<sup>2</sup> *People v. Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

hearing argument from the assistant prosecuting attorney and the defendant's counsel, Judge Maceroni took the motion under advisement. (Tr. 2-10-06, 81-101).

On March 10, 2006, Judge Maceroni signed an Opinion and Order granting the defendant's motion and suppressing the defendant's statements to the RPD detectives. *See* Opinion and Order (3/10/06)- Macomb CC No. 05-4049-FC. The prosecution sought interlocutory leave to appeal Judge Maceroni's ruling to the Michigan Court of Appeals. On June 27, 2006, the Michigan Court of Appeals denied leave to appeal. *See* Order (6/27/06)- COA No. 269376. The prosecution subsequently appealed to this Court. In lieu of granting leave to appeal, this Court remanded this case back to the Michigan Court of Appeals for consideration as on leave granted. *See* Order (7/10/06)- SC No. 131580.

On December 19, 2006, the Michigan Court of Appeals, in a published per curiam opinion, affirmed Judge Maceroni's ruling. *See* Opinion- COA No. 271579. The prosecution now seeks leave to appeal from this opinion with this Court.

## ISSUE

**THE TRIAL COURT REVERSIBLY ERRED IN CONCLUDING THAT THE HEARING-IMPAIRED DEFENDANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HER MIRANDA RIGHTS AND GRANTING HER MOTION TO SUPPRESS HER STATEMENTS TO RPD DETECTIVES.**

## STANDARD OF REVIEW

In reviewing the trial court's determination regarding whether a criminal defendant knowingly and intelligently waived his or her *Miranda* rights, an appellate court engages in de novo review of the entire record. *People v. Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000). The trial court's underlying factual findings are reviewed for clear error. *Id.*

## ARGUMENT

### **I. Walker hearing**

After holding a *Walker* hearing on February 10, 2006, Judge Maceroni concluded that the hearing-impaired defendant's waiver of her *Miranda* rights was not knowing and intelligent and suppressed statements that she made to RPD detectives several hours after Mr. Adelsburg's death. See Opinion and Order (3/10/06)- Macomb CC No. 05-4049-FC. In order to use a statement made by a hearing-impaired defendant obtained either with or without an interpreter, the prosecution must establish that the defendant comprehended his or her *Miranda* rights and intelligently waived them before making the statements. *People v. Brannon*, 194 Mich App 121, 130-131; 486 NW2d 83 (1992). A

waiver is intelligently made when an interpreter familiar with and competent in the criminal defendant's primary language explains the *Miranda* warnings to him or her. *Id.* at 131; 486 NW2d 83. At a *Walker* hearing, the prosecution carries the burden of establishing a criminal defendant's knowing and intelligent waiver of his *Miranda* rights by a preponderance of the evidence. *Id.*

At the *Walker* hearing in the case at bar, Detective Demick testified that RPD officers arrested the defendant at Mr. Adelsburg's house at 29751 Kelly between 11:00 p.m. and 12:00 midnight on April 22, 2005. (Tr. 2-10-06, 10-11). According to Detective Demick, RPD officers took the defendant to the hospital and, subsequently, to the police station, where she was house in a holding cell. (Tr. 2-10-06, 11-12). Detective Demick testified that Detective/Sergeant John Sarrach ("Detective/Sergeant Sarrach") retrieved the defendant from her holding cell between at approximately 6:30 a.m. and brought her into an interview room. (Tr. 2-10-06, 11-14).

Detective Demick testified that he immediately observed that that the defendant "appeared to be deaf." (Tr. 2-10-06, 15). RPD officers discovered at the crime scene that both the defendant and Mr. Adelsburg were hearing-impaired. (Tr. 2-10-06, 16). As a result, Detective/Sergeant Sarrach had arranged for an interpreter named Stacey Yourdan ("Ms. Yourdan") to be present at the interview. (Tr. 2-10-06, 16-17, 25-26).

The detectives did not attempt to speak with the defendant prior to Ms. Yourdan's arrival at the police station. (Tr. 2-10-06, 17).

The interview room was "a small, square room, three brick walls and a door on one side, a table in the middle with four chairs." (Tr. 2-10-06, 18). The defendant sat against the west wall of the interview room. (Tr. 2-10-06, 18). Ms. Yourdan sat directly across from her against the east wall of the interview room. (Tr. 2-10-06, 19). The detectives occupied the two remaining chairs. (Tr. 2-10-06, 20). The camera inside the interview room was located above Ms. Yourdan and faced the defendant. (Tr. 2-10-06, 18-20). Thus, the videotape of the interview shows Ms. Yourdan from behind.<sup>3</sup> (Tr. 2-10-06, 19). Detective Demick testified, however, that Ms. Yourdan interpreted for the defendant throughout the interview. (Tr. 2-10-06, 21).

Throughout the entire interview, the defendant was appropriately responsive to all questions posed to her by the RPD detectives. (Tr. 2-10-06, 14). Detective Demick testified that the defendant did not appear to be under the influence of alcohol or drugs. (Tr. 2-10-06, 13). The defendant did not complain about being hungry or tired. (Tr. 2-10-06, 15). The detectives did not threaten the defendant, raise their voices, bully the defendant, or make her any promises of leniency. (Tr. 2-10-06, 23-24). Neither detective wore a police uniform nor did they have

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<sup>3</sup> Judge Maceroni admitted the videotape of the interview into evidence as People's Exhibit #2. (Tr. 2-10-06, 29). As an admitted exhibit, the videotape should be part of the circuit court file.

weapons. (Tr. 2-10-06, 24-25). The defendant never told the detectives that she had a low IQ, any psychological conditions, or that she could not understand anything they said to her. (Tr. 2-10-06, 57).

Detective Demick testified that Detective/Sergeant Sarrach, before asking her any questions, read a form containing the *Miranda* rights to the defendant.<sup>4</sup> (Tr. 2-10-06, 21-23, 27-28). As Detective/Sergeant Sarrach read the *Miranda* rights, the defendant “was looking at [him] and she was looking at the interpreter when [the interpreter] was signing for her.” (Tr. 2-10-06, 24). The defendant, Detective/Sergeant Sarrach, and Detective Demick each signed the bottom of the form. (Tr. 2-10-06, 22). According to Detective Demick, the defendant “appeared to be paying attention” as he recited the *Miranda* rights. (Tr. 2-10-06, 26). Detective Demick testified that, at the beginning of the recitation, the defendant asked: “Do I need an attorney here?” (Tr. 2-10-06, 28). Detective/Sergeant Sarrach responded: “[Y]ou have the right to have one.” (Tr. 2-10-06, 28). The defendant did not subsequently invoke her right to counsel. (Tr. 2-10-06, 28-29).

Moreover, the defendant told Detective/Sergeant Sarrach that she could read and write.<sup>5</sup> (Tr. 2-10-06, 26, 57). Thus, Detective/Sergeant Sarrach placed the form in “between him and [the defendant] so that she

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<sup>4</sup> Judge Maceroni admitted the form into evidence as People’s Exhibit #1. (Tr. 2-10-06, 29). As an admitted exhibit, the form should be part of the circuit court file.

<sup>5</sup> In his Opinion and Order, Judge Maceroni writes that the defendant failed to give the Detective/Sergeant Sarrach an affirmative response to his question about her ability to read and write. See Opinion and Order (3/10/06)- Macomb CC No. 05-4049-FC. As indicated below, however, the defendant responded affirmatively to this question.

could read it while he was following along.” (Tr. 2-10-06, 26). The defendant never asked Detective/Sergeant Sarrach to clarify any of the *Miranda* rights. (Tr. 2-10-06, 41). Detective Demick testified that he never got the impression that the defendant did not understand her *Miranda* rights. (Tr. 2-10-06, 42). The defendant, Detective/Sergeant Sarrach, and Detective Demick each signed the bottom of the form. (Tr. 2-10-06, 22). Detective Demick testified that the defendant, prior to signing the form, was given a chance to read the form and “appeared” to him read it. (Tr. 2-10-06, 26, 40-41, 57).

A review of the videotape of Detective/Sergeant Sarrach’s recitation of the *Miranda* rights reveals that he did not read the form word-for-word. He did, however, inform the defendant that she had the right to remain silent, that anything she said could be used against her in court, that she had a right to a court-appointed attorney, and that she could exercise these rights at any time. Moreover, the videotape reveals that the defendant nodded in the affirmative in response to each of Detective/Sergeant Sarrach’s recitation of these rights. As indicated in Detective Demick’s testimony, the defendant did interrupt Detective/Sergeant Sarrach at one point during their exchange and say: “Am I supposed to have a lawyer?” Detective/Sergeant Sarrach responded: “You have the right to have one.” Finally, the videotape corroborates Detective Demick’s testimony that the defendant told the

detectives that she could read and write and that the defendant appeared to take several seconds to read the form prior to signing it.

## **II. Knowing and Intelligent Waiver**

Given the foregoing, Judge Maceroni reversibly erred in concluding that the hearing-impaired defendant did not knowingly and intelligently waive his *Miranda* rights. Notably, in *People v. Truong*, 218 Mich App 325, 335; 553 NW2d 692 (1996), the Court of Appeals, dealing with a Vietnamese criminal defendant who could not understand English, noted that “a person speaking to the police through a translator is subject to the same standards as a person fluent in English.” According to the *Truong* Court, “[t]here is no greater obligation on the part of the police to ascertain comprehension of *Miranda* rights with respect to a person using a translator than with respect to a person fluent in English.” *Id.* Here, the totality of the circumstances, outlined above, demonstrates that the defendant “understood [her] rights” and “agreed to waive them by speaking to police.” *Brannon*, 194 Mich App at 131; 486 NW2d 83. The record shows that Detective/Sergeant Sarrach, although not reciting the form verbatim, advised the defendant of her *Miranda* rights.<sup>6</sup> The videotape reveals that the defendant nodded in the affirmative in

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<sup>6</sup> The now-familiar *Miranda* warnings require the police, before a custodial interrogation, to inform a suspect (1) that he has the right to remain silent, (2) that anything he says can and will be used against him in court, (3) that he has a right to the presence of an attorney during questioning, and (4) that if he cannot afford an attorney, one will be appointed for him. 384 US at 469-473; 86 S Ct 1602.

response to each of Detective/Sergeant Sarrach's recitation of these rights.

Moreover, as in *Brannon*, "[i]n light of defendant's hearing difficulties, [the RPD detectives] took special care to see that [s]he understood [her] rights by use of a written form explaining the rights [s]he was waiving." 194 Mich App at 131; 486 NW2d 83. As indicated above, the defendant told the detectives that she could read and write. Further, she appeared to take several seconds to read the form prior to signing it. A knowing and intelligent waiver of *Miranda* rights does not require that a suspect "understand the ramifications and consequences of choosing to waive or exercise the rights that the police have properly explained to him." *People v. Cheatham*, 453 Mich 1, 28; 551 NW2d 355 (1996). Instead, "a very basic understanding is all that is necessary for a valid waiver." *People v. Daoud*, 462 Mich 621, 642; 614 NW2d 152 (2000). Under these circumstances, the defendant knowingly and intelligently waived her *Miranda* rights.

Judge Maceroni's Opinion and Order also focuses on Detective/Sergeant Sarrach's failure to read the form verbatim to the defendant. As indicated, Detective/Sergeant Sarrach did not read the form verbatim to the defendant. This omission, however, does not render the defendant's waiver of her *Miranda* rights deficient. On the contrary, the Michigan Supreme Court has observed that "to establish a valid waiver, the [prosecution] must present evidence sufficient to demonstrate

that the accused understood that he did not have to speak, that he had the right to the presence of counsel, and that the [prosecution] could use what he said in a later trial against him.” *Cheatham*, 453 Mich at 29; 551 NW2d 355 (citing *Moran v. Burbine*, 475 US 412; 106 SCt 1135 (1986)). Indeed, “that is the meaning of intelligent waiver; that and no more.” *Id.* (quoting *Harris v. Riddle*, 551 F2d 936, 939 (CA 4, 1977)).

In the case at bar, the videotape establishes Detective/Sergeant Sarrach advised the defendant that she had the right to remain silent, that anything she said could be used against her in court, that she had a right to a court-appointed attorney, and that she could exercise these rights at any time. Even if Detective/Sergeant Sarrach did not specifically state that the defendant had a right to have an attorney present during questioning (Item #3 on the form), he did indicate that the defendant had a right to an attorney and that she could exercise that right at any time. Further, the defendant appeared to take several seconds to read the form prior to signing it. Item #3 on the form itself stated: “You have the right to have an attorney (lawyer) present before and during the time you answer any questions or make any statements.” Given the foregoing, the prosecution carried its burden at the *Walker* hearing of establishing that the defendant knowingly and intelligently waived her *Miranda* rights.

### **III. The Court of Appeals Opinion**

The opinion from the Court of Appeals, in affirming Judge Maceroni, concluded that the defendant did not knowingly and intelligently waive her Miranda rights because of: (1) the deficiencies of Ms. Yourdan's translation; (2) the defendant's response to Detective Sarrach's query regarding whether she could read and write; and (3) Detective Sarrach's imprecise recitation of the *Miranda* warnings.

First, the Court of Appeals pointed to Ms. Yourdan's translation as a basis for finding that the defendant did not adequately comprehend her *Miranda* rights. Relying on the testimony from Yvonne Jones, a defense witness who testified at the *Walker* hearing, the Court of Appeals observed:

. . . there is no indication in the record that McBride understood all the rights as translated to her. As Jones testified, Yourdan was "a lot of times" merely translating Detective Sarrach's statements word-for-word, such that what was meant by what was being said was not signed. So, according to Jones, all that McBride was receiving was "a bunch of words." See Opinion (12/19/06)- COA No. 271579.

The Roseville detectives, however, wholly complied with the Deaf Persons' Interpreters Act (MCL § 393.505) by "procuri[ng] the presence of a certified interpreter or qualified interpreter." Neither the defendant nor the Court of Appeals appears to maintain that Ms. Yourdan was not a certified interpreter or qualified interpreter within the meaning of the Act.

Instead, the Court of Appeals points to Ms. Jones' testimony in faulting Ms. Yourdan's translation. As the Court of Appeals conceded in its opinion, however, "Yourdan was seated across the table from McBride

with her back to the camera.” See Opinion (12/19/06), 1- COA No. 271579. Thus, “[b]ecause of the angle of the camera, the videotape of the interrogation does not show many of Yourdan’s signs to [the defendant].” See Opinion (12/19/06), 1-2- COA No. 271579. As a result, it is not reasonably possible to conclude based on Ms. Jones’ testimony that Ms. Yourdan’s translation was deficient or that the defendant did not understand it. Moreover, during the interrogation, the defendant never complained to Ms. Yourdan or either of the Roseville detectives that she did not comprehend Ms. Yourdan’s translation. The defendant also chose not to testify at the *Walker* hearing and expressly indicate to Judge Maceroni that she did not comprehend Ms. Yourdan’s translation. Given the existing record, the Court of Appeals erred in employing Ms. Jones’ flawed testimony as a ground for finding the defendant’s waiver was not intelligent and knowing.

Further, the Court of Appeals opinion observed: “. . . the use of a written form was inadequate in light of [the defendant’s] noncommittal response regarding whether she could read and comprehend the constitutional rights form, and the police officers’ failure to further question McBride regarding her limitations.” See Opinion (12/19/06), 11- COA No. 271579. As indicated above, however, Detective Demick testified that the defendant “said yes” when Detective/Sergeant Sarrach asked her if she could read and write. Ms. Yourdan interpreted the defendant’s shrug as an affirmative response. Ms. Jones did not testify

at the *Walker* hearing that the defendant's shrug demonstrated that she did understand the question or that she was indicating that she could not read or write. Although she did not translate the written form for the defendant, Ms. Yourdan translated Detective/Sergeant Sarrach's oral recitation of the *Miranda* warnings. Moreover, the videotape shows that the defendant "paused and appeared to read [the written form] before she signed it." See Opinion (12/19/06), 11- COA No. 271579. In other words, the only testimony in the existing appellate record illustrates that the defendant could read and write. Judge Maceroni clearly erred in finding otherwise.

Finally, the Court of Appeals strains to affirm Judge Maceroni's conclusion that Detective/Sergeant Sarrach did not fully advise the defendant of the *Miranda* warnings. As discussed above, Detective/Sergeant Sarrach's oral recitation of the *Miranda* warnings was not constitutionally deficient. For example, in *People v. Johnson*, 90 Mich App 415; 282 NW2d 340 (1979), the Court of Appeals stated:

In view of the cited cases, the challenged language in the present case appears to us sufficiently comprehensive to pass appellate examination. We hold that police advice to defendant that he "had the right to have an attorney present" cannot reasonably be understood otherwise than as informing defendant of his right to counsel *during interrogation* and not merely at some subsequent trial (italics in original). So considered, the language was adequate to "fairly apprise an accused that he had the right to counsel during interrogation" and thus conforms to the *Miranda* requirements. *People v. McClure, supra*, 29 Mich.App. at 368, 185 N.W.2d at 429. Admission at trial of defendant's inculpatory statement was therefore proper.

Under similar circumstances, the United States Supreme Court came to the same conclusion in *California v. Prysock*, 453 US 355; 101 SCt 2806; 69 LEd2d 696 (1981) (where the defendant was told of the right to appointed counsel, but officer did not say “before questioning,” the Court upheld admission of the statement). Based on *Johnson* and *Prysock*, Judge Maceroni clearly erred in holding that Detective/Sergeant Sarrach’s recitation of the *Miranda* warnings was constitutionally inadequate and that the defendant was not fully informed of her right to counsel during the interrogation.

Under the existing appellate record, the prosecution submits that it carried its burden at the *Walker* hearing of establishing that the defendant knowingly and intelligently waived her *Miranda* rights. The prosecution observes, however, that one of the linchpins of the Court of Appeals opinion is its assumption that the defendant cannot read or write. Thus, as an alternative, the prosecution suggests that this Court remand this case back to Judge Maceroni for an evidentiary hearing regarding whether the defendant can read and write. If the prosecution can demonstrate that the defendant can read and write, neither the defendant nor the Court of Appeals could dispute that the defendant knowingly and intelligently waived her *Miranda* rights. Even so, based on the existing appellate record and for the reasons stated above, Judge

Maceroni clearly erred in deciding that the defendant did not knowingly and intelligently waived her constitutional rights.

**RELIEF REQUESTED**

The plaintiff/appellant respectfully requests that this Honorable Court **REVERSE** the ruling of the lower courts and **ORDER** the defendant/appellee's statements be admitted into evidence at the jury trial.

Respectfully submitted,

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DATED: February 6, 2007.