

STATE OF MICHIGAN  
IN THE SUPREME COURT

\* PMS

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

vs

Supreme Court No.

JULIAS HOLLEY,  
Defendant-Appellee.

OK

Lower Court No. 05-3549  
Court of Appeals No. 264584

Wayne CRZ T. Jackson

Open 1-25-07

133264

APPL

3/20

39851

PLAINTIFF-APPELLANT'S  
APPLICATION FOR LEAVE TO APPEAL

KYM WORTHY  
Prosecuting Attorney  
County of Wayne

TIMOTHY A. BAUGHMAN  
Chief of Research, Training,  
and Appeals

DAVID A. McCREEDY (P56540)  
Assistant Prosecuting Attorney  
1441 St. Antoine, 11<sup>th</sup> Floor  
Detroit, Michigan 48226  
(313) 224-3836

FILED

FEB 22 2007

CORBIN R. DAVIS  
CLERK  
MICHIGAN SUPREME COURT

**TABLE OF CONTENTS**

Index of Authorities ..... -ii-

Statement of Jurisdiction ..... -1-

Statement of Question Presented ..... -2-

Statement of Facts ..... -3-

Argument ..... -6-

    I. In passing M.C.L. 750.483a, the Legislature intended to penalize those who interfere with the reporting, investigation, and prosecution of crimes. The majority’s ruling below (requiring conviction of the underlying crime as an element of this offense), would defeat the Legislature's intent in every case in which the perpetrator’s interference successfully thwarted prosecution of the underlying crime. The Court of Appeals erred in determining the Legislative intent behind M.C.L. 750.483a. .... -6-

    Standard of Review ..... -6-

    Discussion ..... -6-

Review ..... -11-

**INDEX OF AUTHORITIES**

**STATE CASES**

*City of Grand Rapids v. Crocker*,  
219 Mich. 178 (1922) ..... 6

*Koontz v. Ameritech Services, Inc.*,  
466 Mich. 304 (2002) ..... 6

*Paige v. City of Sterling Heights*,  
476 Mich. 495 (2006) ..... 6

*People v. Anstey*,  
476 Mich. 436 (2006) ..... 7

*People v. Burgess*,  
419 Mich. 305 (1984) ..... 5,9

*People v. Hawkins*,  
468 Mich. 488 (2003) ..... 7,9

*People v. Sloan*,  
450 Mich. 160 (1995) ..... 7

**STATEMENT OF JURISDICTION**

MCR 7.301(A)(2) gives this Court jurisdiction to review a case, by leave, after decision by the Court of Appeals.

## STATEMENT OF QUESTION PRESENTED

### I.

**In passing M.C.L. 750.483a, the Legislature intended to penalize those who interfere with the reporting, investigation, and prosecution of crimes. The majority's ruling below (requiring conviction of the underlying crime as an element of this offense), would defeat the Legislature's intent in every case in which the perpetrator's interference successfully thwarted prosecution of the underlying crime. Did the Court of Appeals err in determining the Legislative intent behind M.C.L. 750.483a?**

The People answer, "Yes."

## STATEMENT OF FACTS

Defendant was charged with felonious assault, interfering with the reporting of a crime, and habitual second. At his waiver trial before 3<sup>rd</sup> Circuit Judge Thomas Jackson, complainant Peggy Gordon testified that the father of her youngest daughter—defendant—came home drunk on March 7, 2005, and began arguing with her.<sup>1</sup> The argument continued in the living room in front of Gordon’s oldest daughter. Eventually, defendant went into the kitchen and got a knife.<sup>2</sup> Approaching with the weapon, he said, “I hurt you.” Gordon responded, “No you won’t,” and went to pick up the phone.<sup>3</sup> She told defendant she was calling the police.<sup>4</sup> He then cut the cord with the knife, preventing her from making the call.<sup>5</sup> Although Gordon admitted that defendant never pointed the knife directly her, he was within arm’s reach from her and she thought he was going to hurt her.<sup>6</sup> Further, Gordon’s ten-year-old daughter told the police then and testified at trial that defendant said “I’m going to kill you” to Gordon.<sup>7</sup> No one else testified.

Judge Jackson determined that the People had not met their burden as to the felonious assault charge. As to the misdemeanor 750.483a count, the court initially indicated that, since Gordon “perceived” that defendant had committed a crime, and because he had then prevented her from

---

<sup>1</sup>TR at 7.

<sup>2</sup>TR at 8.

<sup>3</sup>TR at 8.

<sup>4</sup>TR at 10.

<sup>5</sup>TR at 8.

<sup>6</sup>TR at 9-10.

<sup>7</sup>TR at 20.

reporting it, he was guilty of violating M.C.L. 750.483a. He thus provisionally found defendant guilty of count two, and allowed the parties a chance to research what standard of proof was required to establish the underlying crime, and whether a victim's perception that a crime was committed is sufficient.<sup>8</sup>

After reviewing briefs from both sides, Judge Jackson found that the purpose of the statute was to prevent conduct such as defendant's.

And I think the prosecution presents a very cogent argument here that when if someone, the basic thrust and reason, and objective of such a statute is, of course, I think, to prevent persons from attempting or to interfere with someone making a report, and certainly a person who at that time that they make that report should not be subject to whether or not someone is or should be convicted of an underlying crime or another crime beyond a reasonable doubt and that becomes I think critical to the meaning and purpose of the particular statute.<sup>9</sup>

Additionally, the trial court indicated that, although defendant had been acquitted of the underlying crime, that verdict likely would have been different if the standard had only been a preponderance of the evidence.<sup>10</sup> Thus, according to the court, "from the perspective of the complainant here of what she did and why, I think that under those circumstances that the statute's purpose is met and that the defendant did, in fact, try to prevent her from reporting a crime or an attempted crime here."<sup>11</sup>

On appeal, a two-judge majority of the Court of Appeals reversed and remanded, holding that the victim's perception that the underlying crime had occurred was insufficient to sustain a guilty

---

<sup>8</sup>TR at 27.

<sup>9</sup>SE at 5.

<sup>10</sup>SE at 5.

<sup>11</sup>SE at 5.

verdict of interfering with the reporting of that crime. Instead, according to the majority, while a defendant need not be convicted of the underlying crime, that crime must be proved beyond a reasonable doubt in order to convict a defendant of interfering with the reporting of it. Looking to this Court's holding in a felony-firearm case, Judges Zahra and Cavanagh found that the Legislature had to have known when making it illegal to "prevent or attempt to prevent through the unlawful use of physical force another person from reporting a crime *committed or attempted* by another person," that *People v. Burgess*, 419 Mich. 305 (1984), had held that similar language in the felony-firearm statute required the underlying felony to be proved beyond a reasonable doubt. Thus, given the possibility that Judge Jackson had convicted defendant of violating M.C.L. 750.483a absent proof beyond a reasonable doubt that he had committed an underlying crime, the court remanded for further findings by the trial court.

Judge Schuette dissented, arguing that nothing in the statute in question mandates that the defendant be convicted of the underlying crime, which the logic, if not the holding, of the majority requires. Judge Schuette would have affirmed, because although a reasonable doubt existed whether defendant had committed felonious assault, that did not mean he did not commit the underlying crime, only that prosecution failed to prove defendant's guilt beyond a reasonable doubt.

This application thus ensues.

## ARGUMENT

### I.

**In passing M.C.L. 750.483a, the Legislature intended to penalize those who interfere with the reporting, investigation, and prosecution of crimes. The majority's ruling below (requiring conviction of the underlying crime as an element of this offense), would defeat the Legislature's intent in every case in which the perpetrator's interference successfully thwarted prosecution of the underlying crime. The Court of Appeals erred in determining the Legislative intent behind M.C.L. 750.483a.**

#### **Standard of Review:**

This court reviews questions of statutory construction de novo.<sup>12</sup>

#### **Discussion:**

The Court of Appeals' decision in this case must be overturned because it undermines the clear legislative intent behind the statute in question. As this court has affirmed time and time again, its “fundamental obligation” in interpreting statutes “is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute.”<sup>13</sup> That is, this Court must consider the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose.<sup>14</sup> And while rules of statutory construction exist to help determine legislative intent, they do not substitute for it, nor should they be applied mechanically, without regard for the overall purpose implied by the statute.<sup>15</sup>

---

<sup>12</sup>*Paige v. City of Sterling Heights*, 476 Mich. 495, 504 (2006).

<sup>13</sup>*Id.* (citations and internal quotation marks omitted).

<sup>14</sup>See *Koontz v. Ameritech Services, Inc.*, 466 Mich. 304, 326 (2002).

<sup>15</sup>*City of Grand Rapids v. Crocker*, 219 Mich. 178, 182 (1922) (Rules of construction “serve but as guides to assist the courts in determining such intent with a greater degree of

*People v. Hawkins*<sup>16</sup> demonstrates the error in mechanistically applying rules of statutory interpretation without regard for the overall purpose or language of a statute. In that case, the Court of Appeals had upheld the application of the exclusionary rule to evidence discovered in violation of M.C.L. 780.653, which required that a search warrant affidavit indicate that the informant was credible and that his information was reliable.<sup>17</sup> In reversing, this Court repudiated the mechanistic application of the “legislative acquiescence” rule of statutory construction. That is, despite the facts that (1) this Court in *People v. Sloan*<sup>18</sup> had previously applied the exclusionary rule to violations of section 780.653; (2) the Legislature had subsequently amended the statute without addressing this Court’s application of the exclusionary rule; and (3) the “legislative acquiescence” rule of statutory construction would thus indicate that the Legislature meant by its silence to incorporate the exclusionary rule; the *Hawkins* Court held that the rule did not apply.<sup>19</sup> To the contrary, this Court found no reason to subordinate its “primary principle of construction—to ascertain the Legislature’s intent,” to the rote application of a rule of construction.<sup>20</sup>

The statute at issue here—M.C.L. 750.483a—criminalizes attempts to interfere with the reporting, investigating, or prosecution of crimes. More specifically, this provision makes it illegal to do, *inter alia*, any of the following:

---

certainty.”).

<sup>16</sup>468 Mich. 488 (2003).

<sup>17</sup>*Id.* at 503.

<sup>18</sup>450 Mich. 160 (1995).

<sup>19</sup>468 Mich. at 507.

<sup>20</sup>*Id.* at 508-09. See also *People v. Anstey*, 476 Mich. 436, 445 n.7 (2006).

- Prevent or attempt to prevent through the unlawful use of physical force another person from reporting a crime committed or attempted by another person.
- Retaliate or attempt to retaliate against another person for having reported or attempted to report a crime committed or attempted by another person.
- Give, offer to give, or promise anything of value to any person to influence a person's statement to a police officer conducting a lawful investigation of a crime or the presentation of evidence to a police officer conducting a lawful investigation of a crime.
- Threaten or intimidate any person to influence a person's statement to a police officer conducting a lawful investigation of a crime or the presentation of evidence to a police officer conducting a lawful investigation of a crime.
- Knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding.<sup>21</sup>

The general purpose here is clearly to deter and punish those who would attempt to escape justice by interfering in the criminal investigatory process.

The Court of Appeals' ruling in this case, requiring proof beyond a reasonable doubt of the underlying crime before a conviction could be had under the instant statute, would defeat the Legislature's purpose in most cases. More tellingly, under the holding below, defendants would avoid prosecution under section 483a in *all* cases where their interference was successful. That is, any time that a defendant prevented a successful prosecution of the underlying crime by:

- physically preventing the reporting of the crime,
- retaliating against a person for reporting a crime so that they refuse to pursue the prosecution,
- bribing or threatening a witness to give a police statement which mitigates or denies the defendant's involvement,
- bribing or threatening a witness to withhold evidence of the defendant's involvement, or
- tampering with evidence,

---

<sup>21</sup>M.C.L. 750.483a(1)(b), (1)(c), (3)(a), (3)(b), and (5)(a).

such defendant will thereby immunize himself from prosecution under M.C.L. 750.483a, because, as of now, the Court of Appeals requires proof beyond a reasonable doubt that the underlying crime was committed before a defendant can be convicted of the interfering-with-crime-reporting statute. This cannot have been the intent of our Legislature in passing M.C.L. 750.483a.

In erroneously holding otherwise, the Court of Appeals' two-judge majority relied on the fact that the terms “crime” or “attempt to commit a crime” are not defined by M.C.L. 750.483a. So the majority looked to the judicial interpretations of those words in the felony-firearm statute, M.C.L. 750.227b, holding that *People v. Burgess*<sup>22</sup> requires that the underlying felony be proved beyond a reasonable doubt. In other words, the Legislature knew how “commits or attempts to commit a felony” had been interpreted in *Burgess*, and so must have incorporated that interpretation when including similar wording in section 483a.

But this elevates a principle of statutory construction—that the Legislature is presumed to know how similar phrases used in other statutes have been interpreted by the courts and intends the same meaning—over the court’s duty to effectuate the clear intent behind the statute. As indicated, the Court of Appeals’ holding would effectively gut 750.483a in every case in which a defendant was successful in using threats and intimidation to escape prosecution for the underlying offense. As in *Hawkins*, this was error. There is no reason to believe that the Legislature intended to incorporate into M.C.L. 750.483a *Burgess*’s judicial construction of “commits or attempts to commit a crime” as found in M.C.L. 750.227b. The statutes are not related and serve totally different purposes, and there are many other criminal sections using those terms that have not been construed pursuant to *Burgess*.

---

<sup>22</sup>419 Mich. 305, 310 (1984).

Thus, contrary to the Court of Appeals' holding, nothing in M.C.L. 750.483a requires that the underlying crime be proved beyond a reasonable doubt in order to prosecute the defendant for trying to prevent his conduct from being reported. There is absolutely no indication that the Legislature intended to shield from liability those who successfully interfere in the criminal justice system. Instead, it is clear that the intent behind the statute was to penalize those who interfere when a person reports that a crime has been attempted or committed.

Furthermore, although here a reasonable doubt may have existed as to defendant's felonious assault charge, that does not mean he did not commit that crime. In fact, Judge Jackson stated that "if this was a lesser standard, such as a preponderance of the evidence or some other lesser factors here, [the acquittal on the assault charge] might have been quite a different circumstance."<sup>23</sup> In other words, the fact that defendant had committed an underlying crime was not merely based on the victim's subjective "perception."<sup>24</sup> The police believed a crime had been committed or else would not have brought a warrant. The prosecutor believed likewise or would not have signed it. Defendant had the opportunity for a preliminary exam and a motion to quash if he believed no crime had been committed. And Judge Jackson strongly suggested that he also believed defendant had assaulted witness Gordon, but the crime had not been proved beyond a reasonable doubt. There is no reason, and certainly no intent evidenced in the statute, to exclude defendant's conduct—cutting the phone line and preventing Gordon from contacting police—from criminal liability.

---

<sup>23</sup>7.28.05 at 5.

<sup>24</sup>And there would be no need to create a rule requiring that the underlying crime be proved beyond a reasonable in order to guard against false accusations, in light of the fact that M.C.L. 750.411a already penalizes the false reporting of crimes.

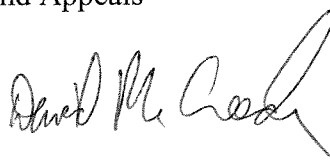
**RELIEF**

THEREFORE, the People request this Honorable Court to grant the People's application for leave to appeal.

Respectfully submitted,

KYM WORTHY  
Prosecuting Attorney  
County of Wayne

TIMOTHY A. BAUGHMAN  
Chief of Research, Training,  
and Appeals



**DAVID A. McCREEDY (P56540)**  
Assistant Prosecuting Attorney  
1441 St. Antoine, 11<sup>th</sup> Floor  
Detroit, Michigan 48226  
(313) 224-3836

Dated: February 20, 2007