

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

JULIAS HOLLEY,

Defendant-Appellant.

Supreme Court No. 133264

Court of Appeals No. 264584

Lower Court No. 05-3549-01

WAYNE COUNTY PROSECUTOR
Attorney for Plaintiff-Appellant

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133264
OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

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I. REVIEW IS NOT WARRANTED OF THIS UNPUBLISHED DECISION WHICH INTERPRETS A MISDEMEANOR STATUTE IN A MANNER CONSISTENT WITH THIS COURT'S PRECEDENT.

In its unpublished opinion, the Court of Appeals interpreted MCL 750.483a(1)(b), a misdemeanor statute, in a manner wholly consistent with this Court's opinion in *People v Burgess*, 419 Mich 305; 353 NW2d 444 (1984) and *People v Lewis*, 415 Mich 443; 330 NW2d 16 (1982). As the People admit, App at 9, MCL 750.483a(1)(b) contains language that is identical to the felony firearm statute at issue in *Burgess* and *Lewis*. The Court of Appeals expressly followed and relied upon the decision in *Burgess* in reaching its conclusion:

[W]e agree with defendant that MCL 750.483a(1)(b) requires proof beyond a reasonable doubt of a crime committed or attempted. See *People v Burgess*, 419 Mich 305, 310; 353 NW2d 444 (1984) (A felony firearm conviction may not be had unless the defendant committed or attempted to commit a felony). It is unclear whether the trial court based defendant's conviction on a finding that a crime was committed or attempted, or based on the complainant's mere perception that a crime was committed or attempted. The record reflects that the trial court may have interpreted MCL 750.483a(1)(b) to permit a conviction based only on the perception of the person reporting a crime committed or attempted. This interpretation is erroneous as it reads the word perception into the plain language of the statute, *People v Spann*, 250 Mich App 527, 532; 655 NW2d 251 (2002), and reversal is required because this interpretation permits a conviction under MCL 750.483a(1)(b) based on proof less than beyond a reasonable doubt of a crime committed or attempted.

(Opn. at 3) Furthermore, since the opinion is unpublished, it has no precedential value. MCR 7.215(C).

As they did below, the prosecutor argues that review is warranted because, as a matter of "public policy," such a standard should be judicially grafted onto the words of the existing statute. (App at 6, 8-9) Of course, it is not for the courts to legislate. *In re Blackshear*, 262 Mich App 101, 111 (2004), quoting *People v. Jahner*, 433 Mich. 490, 501 (1989) (It is this

Court's function "to fairly interpret a statute as it then exists; it is not the function of the court to legislate.") Whether or not it is good public policy, the Legislature has made the determination that the actual commission (or attempted commission) of a crime is necessary to support a violation of MCL 750.483a.

Moreover, the Court of Appeals remanded the case with instructions to the trial court to decide whether proof had been offered at the original bench trial to support the conviction on other grounds.

Accordingly, because the trial court apparently interpreted MCL 750.483a(1)(b) to only require the complainant's perception that there was a crime committed or attempted, the trial court's findings are insufficient to sustain the conviction. If the findings are insufficient, remand for additional findings is necessary. *People v Porter*, 169 Mich App 190, 193; 425 NW2d 514 (1988). On remand, we instruct the trial court to decide whether there was an actual crime committed or attempted. The trial court may consider lesser-included crimes of an assault with a dangerous weapon to establish a crime committed or attempted, under MCL 750.483a(1)(b). Further, similar to a felony-firearm offense, MCL 750.483a(1)(b) does not require a scienter element, i.e., there is no need to show that the defendant intended to commit the underlying crime. *People v Nix*, 165 Mich App 501, 505; 419 NW2d 7 (1986).

(Opn. at 3)

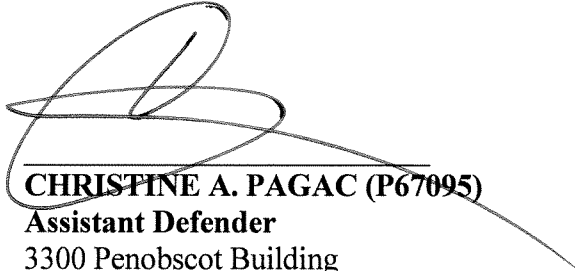
The People do not indicate in their application which ground under MCR 7.302(B) for relief this case would satisfy, perhaps because it does not in fact qualify under any of the grounds. This case does not present any issue of importance to this State's jurisprudence. *See* MCR 7.302(B)(3). The Court of Appeals decision was not clearly erroneous and will not cause manifest injustice. *See* MCR 7.302(B)(5). The Court of Appeals decision does not conflict with any decision of this Court or another panel of the Court of Appeals. *See* MCR 7.302(B)(5). None of the other grounds for review are even remotely applicable.

The Application for Leave to Appeal should be denied.

Respectfully submitted,

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