

**STATE OF MICHIGAN**  
**IN THE SUPREME COURT**

**PEOPLE OF THE STATE OF MICHIGAN,**

Plaintiff-Appellant,

-vs-

**JULIAS HOLLEY,**

Defendant-Appellee.

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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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**CHRISTINE A. PAGAC (P67095)**  
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**SUPPLEMENTAL BRIEF OF DEFENDANT-APPELLEE JULIAS HOLLEY**

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**STATEMENT OF JURISDICTION**

Defendant-Appellant concurs in the statement of jurisdiction by the Plaintiff-Appellant.

STATEMENT OF QUESTIONS PRESENTED

- I. UNDER THE PLAIN LANGUAGE OF MCL 750.483A(1)(B), IS AN ELEMENT OF THE CRIME OF INTERFERING WITH A CRIME REPORT THAT THE COMPLAINANT IS REPORTING A CRIME THAT HAS BEEN COMMITTED OR ATTEMPTED?

Court of Appeals answers, "Yes"

Plaintiff-Appellant answers, "No"

Defendant-Appellee answers, "Yes".

## STATEMENT OF FACTS

On June 30, 2005, after a bench trial in front of Judge Thomas Jackson, Defendant Julias Holley was acquitted of the only felony charge against him, assault with a deadly weapon. (T 26-27) The court, however, subsequently convicted him of interfering with the report of that same crime, in violation of MCL 750.483a(1)(b).

The charges arose from an incident between Mr. Holley and Peggy Gordon on March 7, 2005. (T 5) Gordon testified that during an argument Mr. Holley said he was leaving, went into the kitchen and grabbed a knife, told her "I hurt you," and then "cut the phone cords" with a knife. (T 8) He then said "that's not me and threw the knife back on the stool" and the two continued arguing. (T 9) Upon further questioning, she continued, "I reached for the phone, he cut the phone cords so I couldn't call my mom." (T 9) Later, however, she claimed she told Mr. Holley she was calling the police. (T 10)

The telephone cord was not entered into evidence. The police had not asked for the cord, nor had they taken pictures of it. (T 12) Brandy Edwards, Gordon's 10 year old daughter, testified that she did not see the telephone cord cut. (T 17) She did, however, see Mr. Holley bring the knife into the room and put it on the stool. (T 19)

After the close of the very brief trial, Judge Jackson asked whether for a violation of MCL 750.483a(1)(b), there must "be a crime show or proven" or is it enough "if the person perceive[s]" that there were. (T 24)

Judge Jackson then found Mr. Holley not guilty of the assault charge, finding, "I'm not persuaded by the testimony of Ms. Gordon here enough to believe proof beyond a reasonable doubt that this occurred as indicated, particularly in terms of the threat." (T 26) As to the second count, interference with a crime report, the court stated:

To be specific, if, in fact, she only has to perceive a crime being committed and that is in her mind, and I'm not convinced that there was and I so find, so if it's enough that she perceived it, then that's enough for that charge to stand. If, in fact, it has to be an actual crime for that particular one to stand, then I would find that that doesn't stand.

(T 27)

The trial court ultimately found that because Gordon perceived a crime was being committed, that perception combined with Mr. Holley's actions was sufficient to satisfy the elements of MCL 750.483a(1)(b). (ST 5) On July 28, 2005, Mr. Holley was sentenced to two years probation. (Judgment of Sentence)

The Court of Appeals held that in order to convict someone of violating MCL 483a(1)(b), the prosecutor must prove that a crime was "committed or attempted," but that it was not necessary that the person be convicted of the commission of that crime.

## ARGUMENT

**I. UNDER THE PLAIN LANGUAGE OF MCL 750.483A(1)(B), AN ELEMENT OF THE CRIME OF INTERFERING WITH A CRIME REPORT IS THAT THE COMPLAINANT IS REPORTING A CRIME THAT HAS BEEN COMMITTED OR ATTEMPTED. ALL ELEMENTS OF A CRIME MUST BE PROVEN BEYOND A REASONABLE DOUBT.**

**A. Standard of Review/Issue Preservation**

Issues of statutory construction are reviewed de novo. *People v Phillips*, 469 Mich 390, 394 (2003). This issue of whether the commission of a crime or attempted crime is an element of this offense was preserved by trial counsel, (T 23-25), raised by counsel on appeal, and was directly addressed by the Court of Appeals. Preserved constitutional errors require reversal unless the prosecutor can demonstrate that the error is harmless beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 774 (1999).

**B. Argument**

This Court has asked for supplemental briefing on the issue of whether conviction for violation of MCL 750.483a requires proof beyond a reasonable doubt that a crime have been committed or attempted. With respect to a violation of MCL 750.483a(1)(b), the provision at issue in this case, the plain language of the statute dictates an affirmative answer.

Indisputably, all elements of a crime must be found beyond a reasonable doubt by the trier of fact. US Const., Amend XIV, Mich Const. 1963, Art. 1 §17, *In Re Winship*, 397 U.S. 358 (1970). It is the Legislature's constitutional function to create and define crimes. 1963 Const Art. 4 § 1, *People v Lively*, 470 Mich 248, 256 (2004) ("Our Legislature is responsible for defining the elements of criminal offenses, and we therefore adhere to those definitions."), *People v Silver*, 302 Mich 359, 360, 4 NW2d 687 (1942), *People v Hanrahan*, 75 Mich 611, 619, 42 NW 1124 (1889).

In reviewing a statute, this Court is obliged “to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute.” *Koontz v Ameritech Services, Inc.*, 466 Mich 304, 312, 645 NW2d 34 (2002). This Court’s “most fundamental principle of construction [is] that there is no room for judicial interpretation when the Legislature’s intent can be ascertained from the statute’s plain and unambiguous language.” *People v Hawkins*, 468 Mich 488, 510, 668 NW2d 602 (2003). ‘If the statute’s language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written.’ *City of South Haven v Van Buren County Bd of Comrs*, No. 131001, \_\_\_ Mich \_\_\_, \_\_\_ NW2d \_\_\_ (July 11, 2007), *see also eg, Fluor Enterprises, Inc v. Dept of Treasury*, 477 Mich. 170, 174, 730 N.W.2d 722 (2007) (“ ‘If the statute is unambiguous it must be enforced as written.’ ”) (citation omitted), *Rowland v. Washtenaw Co Rd Comm*, 477 Mich 197, 202, 731 NW2d 41 (2007) (“When the language is unambiguous, we give the words their plain meaning and apply the statute as written.”), *Apsey v. Mem Hosp*, 477 Mich 120, 127, 730 NW2d 695 (2007) (“To accomplish this task, we start by reviewing the text of the statute, and, if it is unambiguous, we will enforce the statute as written because the Legislature is presumed to have intended the meaning expressed.”), *Haynes v. Neshewat*, 477 Mich 29, 35, 729 NW2d 488 (2007) (“If the statute is unambiguous, this Court will apply its language as written.”), *Saffian v. Simmons*, 477 Mich 8, 12, 727 NW2d 132 (2007) (“ ‘If the statute is unambiguous it must be enforced as written.’ ”) (citation omitted).

Mr. Holley was convicted of violating MCL 750.483a(1)(b). The text of that provision provides:

(1) A person shall not do any of the following:

(b) Prevent or attempt to prevent through the unlawful use of physical force another person from reporting a crime committed or attempted by another person

Thus, using the plain terms of the statute, the Legislature has defined the elements of this crime to be (1) preventing or attempting to prevent, (2) through the unlawful use of physical force, (3) someone from reporting a crime committed or attempted by another person.

It is that final element that is at issue in this case. All words and phrases in a statute that are not terms of art must be given their “common and approved” meanings. MCL 8.3a, *Hawkins, supra*, at 510. A “crime” is statutorily defined as an “act or omission forbidden by law which is not designated as a civil infraction” and punishable in certain, specified manners. MCL 750.5. Therefore, in order for a Defendant to be found guilty of violating MCL 750.483a(1)(b), the finder of fact must conclude that a crime, as that term is defined in MCL 750.5, was “committed or attempted.”

To commit, in legal parlance, means “to perpetrate (a crime).” Black’s Law Dictionary, Seventh Ed. Commonly defined, the term similarly means much the same thing: “to carry into action deliberately: PERPETRATE.” [www.m-w.com](http://www.m-w.com) (Merriam-Webster Online Dictionary). “Perpetrate’ is defined as ‘to carry out, enact, commit.’ Random House Webster's College Dictionary (1997), p. 972.” *People v Gillis*, 474 Mich 105, 712 NW2d 419, 425-426 (2003). “To ‘carry out’ is defined as ‘to effect or accomplish, complete.’” *Id.* at 426. Thus, one commits a crime when all of the elements of the crime have been completed. *People v. Patskan*, 387 Mich 701, 714, 199 NW2d 458 (1972).

“[W]ords and phrases that have acquired a unique meaning at common law are interpreted as having the same meaning when used in statutes dealing with the same subject.” *People v. Robinson*, 475 Mich 1, 5, 715 NW2d 44 (2006). This Court long ago, under the common law, defined an “attempted” crime as being “a felonious intent to commit the crime and an overt act going beyond mere preparation toward the commission of the crime.” *People v Bauer*, 216 Mich 659, 185 NW 694 (1921). Black’s Law Dictionary contains the same definition: “an overt act that is done with the intent to commit a crime but that falls short of completing the crime.”

Thus, the final element of the crime here, that the person interfered with be reporting “a crime committed or attempted” means that the person must have been reporting that someone had either completed all of the elements of the crime or that the person had commit an overt act going beyond mere perpetration with the felonious intent to commit that crime. Nowhere in those definitions to the terms “alleged,” “perceived,” or even “honest belief” appear. What the Complainant, the police officer and even the prosecutor believe is irrelevant under this statute: it is the Defendant’s actions and *mens rea* that matter. The Legislature’s choice of plain language of the statute itself defines the scope of the offense to be a crime, either completed or attempted, not merely perceived or being investigated. Constitutionally, the prosecution must prove this element – like all elements of the crime – beyond a reasonable doubt. *In re Winship, supra*.

The correctness of this interpretation of MCL 750.483a is further demonstrated by this Court’s interpretation of the virtually identical phrase in the felony firearm statute. *See* MCL § 750.227b. MCL § 750.227b prohibits a person from carrying or having in possession a firearm when he or she “commits or attempts to commit” a felony.) With respect to that statute, this Court has held that the commission (or attempted commission) of the felony is an element of the

crime. *People v Lewis*, 415 Mich 443, 454-455 (1982), *People v Burgess*, 419 Mich 305 (1984). Contrary to the prosecution's repeated assertion the Court of Appeals nowhere in its opinion relies on legislative acquiescence. Rather, it is simply interpreting a similar phrase consistently with this Court's prior opinion and the plain meaning of the language that the Legislature chose.

Notably, the prosecution never says precisely what the elements of this crime would be under their interpretation of the statute, undoubtedly because their argument is contrary to the plain language of the statute. Gleaning the elements of a violation of 483a(1)(b) from their brief, it would appear that the prosecution is asserting that the elements of this crime are (1) preventing or attempting to prevent, (2) through the unlawful use of physical force, (3) someone from reporting an alleged crime. The Legislature, however, chose not to use the word "alleged," requiring instead that the report be of "a crime committed or attempted."

The prosecution could be arguing that the final element of this crime is not that the person be reporting "a crime committed or attempted," but rather that someone is calling the police to instigate an investigation. The Legislature, however, was careful not to use the word "investigation" in this part of the statute. Crimes relating to the interference with an "lawful investigation of a crime" are addressed in subsection 3 of section 483a. That subsection, however, is not at issue in this case. Notably, in subsection 3 the Legislature chose not to require that the crime being investigated have been "committed or attempted." *Compare* MCL 750.483a(1)(b) with MCL 750.483a(3). Thus, taken in whole or in part, the plain language of the statute distinguishes a crime "committed or attempted" from a "lawful investigation of a crime."

Moreover, the prosecution's insists that its proposed interpretation of the statute, in which the phrase "committed or attempted" is simply read out of the statute, is consistent with this

Court's decision in *People v Hawkins*, 468 Mich 488 (2003). Not so. In *Hawkins*, this Court held that additional terms should not be read into a statute, not that phrases in the statute should be ignored.

The prosecution is also wrong on its policy point: the Court of Appeals' interpretation of the statute does not gut 483a(1)(b). It simply requires the prosecution to prove, as it is constitutionally required to prove all elements of every offense, that a "crime" was "committed or attempted" and that someone interfered with the report of the crime. Retaliation, bribery and tampering with evidence are all separate crimes that could be charged and punished pursuant to this same statute, section 483a, just as a person could be prosecuted for making a false crime report as the prosecution suggests in their brief.

In sum, the prosecutor's argument, although it pays lip service to this Court's insistence on strict adherence to the language of the statute, amounts to nothing more than a thinly veiled argument that as a matter of "public policy" this Court should ignore the Legislature's mandate that the commission or attempted commission of a crime is an element of the crime it defined in section 483a. 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.")

"A court is not free to cast aside a specific policy choice adopted on behalf of the people of the state by their elected representatives in the Legislature simply because the court would prefer a different policy choice. To do so would be to empower the least politically accountable branch of government with unbridled policymaking power. Such a model of government was not envisioned by the people of Michigan in ratifying our Constitution, and modifying our structure of government by judicial fiat will not be endorsed by this Court." *People v Schaefer*, 473 Mich 418, 432 (2005).

As this Court recently stated in *Schaefer*,

It is true that the cardinal rule of statutory interpretation is to give effect to the intent of the Legislature. However, the Legislature's intent must be ascertained from the actual text of the statute, not from extra-textual judicial divinations of "what the Legislature really meant." As we stated in *Lansing Mayor, supra*, "rather than engaging in legislative mind-reading to discern [legislative intent], we believe that the best measure of the Legislature's intent is simply the words that it has chosen to enact into law."

*Id.* Whether or not the prosecution agrees with the public policy, the Legislature was acting well within its constitutional bounds in making the policy determination. The plain language of the statute shows that the Legislature decided that the actual commission (or attempted commission) of a crime is necessary to support a violation of MCL 750.483a(1)(b).

Finally, as the Court of Appeals made clear, a conviction of the underlying offense is *not* a necessary element of this offense. Under the circumstances of this case, however, Defendant has consistently contended that because he had a bench trial and was acquitted of the crime he allegedly interfered with the Complainant reporting, he could not be convicted of violating MCL 483a(1)(b). This is purely because a judge, unlike a jury, is not allowed to reach inconsistent verdicts. *People v Ellis*, 468 Mich 25, 658 NW2d 142 (2003). Defendant obviously did not make this argument clearly enough, because both the Court of Appeals and the prosecution have consistently misconstrued the Defendant's point. This straw man should be recognized for the decoy that he is. (Indeed, there is no need to "imagine"<sup>1</sup> circumstances under which one could be acquitted of the underlying offense, but convicted of interfering with the report of that alleged offense: that is precisely what happened to Mr. Holley in this case).

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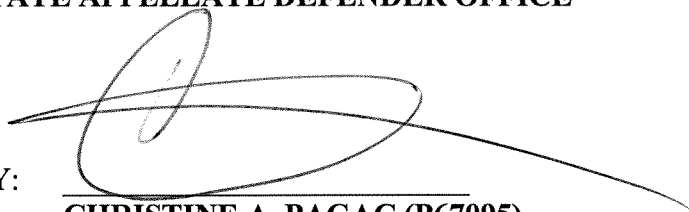
<sup>1</sup> Pros. Supp. Br. at 12.

**CONCLUSION**

This Court should deny the prosecution's application for leave to appeal. If this Court chooses to take peremptory action, it should affirm the decision of the Court of Appeals as its interpretation of MCL 750.483a is consistent with the plain language of the statute.

Respectfully submitted,

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