STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

MACARIO G. YAMAT, JR.,
Defendant-Appellee.

Supreme Court No. _____

Court of Appeals No. 257923

Kent County Circuit Court No. 04-02637-AR

PLAINTIFF-APPELLANT'S

APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF APPELLATE JURISDICTION

The seek leave to appeal from the decision of the Court of Appeals pursuant to MCR 7.301(A)(2).

ORDER APPEALED FROM AND RELIEF SOUGHT

The People seek leave to appeal from a published decision of the Court of Appeals issued on March 24, 2004, Docket No. 257923. In that decision, the Court of Appeals held that the lower courts properly dismissed a charge of Felonious Driving[1] against Defendant Macario Yamat. The Court of Appeals affirmed the holdings of the District and Circuit Courts, which found that the actions alleged to have been committed by Defendant – grabbing the steering wheel of a moving car from the passenger seat and causing the car to swerve and injure a pedestrian – did not constitute "operating" the vehicle and did not fall within the proscription of the Felonious Driving statute. The Court of Appeals decided the case without the benefit of oral argument, pursuant to MCR 7.214(E).

The People seek leave to appeal this issue to this Honorable Court or, in the alternative, peremptory reversal of the Court of Appeals decision.

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[1] MCL 257.626c

STATEMENT OF QUESTION PRESENTED

The Motor Vehicle Code defines an operator of a motor vehicle as a person who is in physical control of the vehicle. When Defendant grabbed the steering wheel of a moving vehicle from the passenger seat and turned the wheel, causing the vehicle to veer off the road, was Defendant exercising physical control over the vehicle and therefore operating the vehicle?

The trial court answered "No."

The Circuit Court answered "No."

The Court of Appeals answered "No."

Plaintiff-Appellant answers "Yes."

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Defendant in this case was charged with Felonious Driving pursuant to MCL 257.626c.[2] At the preliminary examination, the parties agreed to stipulate to the facts of the incident from which the charges arose, and no witnesses were called to testify. (Prelim vol I: 4). The facts as indicated in the police report are that Henrietta Danelson was driving her vehicle with Defendant in the front passenger seat. The two were having an argument as they drove down the street. Ms. Danelson told police that Defendant suddenly reached over and grabbed the top of the steering wheel and turned it while the car was moving. The car went off the road, over a curb, and struck a jogger on the sidewalk. The jogger was seriously injured.

The parties stipulated to the facts for the purposes of the preliminary examination in order to address the legal issue of whether Defendant's act of turning the steering wheel constituted "operating" the vehicle for the purposes of the felonious driving statute. The preliminary examination was adjourned to allow the parties to brief the issue. (Prelim vol I: 4). The district court judge subsequently ruled that as a matter of law Defendant was not "operating" the vehicle within the meaning of the motor vehicle code, and dismissed the charges. (Prelim vol II: 25). The People appealed the decision to the 17th Circuit Court. On August 27, 2004, the Circuit Court affirmed the decision of the District Court. The Court of Appeals granted the People's

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2 A person who operates a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property resulting in a serious impairment of a body function of a person, but does not cause death, is guilty of felonious driving punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

application for leave to appeal on October 1, 2004. The Court subsequently notified the parties that the case was being submitted for decision without oral argument pursuant to MCR 7.214(E). On March 24, 2004, the Court of Appeals issued a published opinion affirming the decisions of the lower courts. *People v Yamat*, ___ Mich App ___ (Docket No. 257923). Copies of the decisions of the District and Circuit Courts and the Court of Appeals are attached.

The People now seek leave to appeal from the decision of the Court of Appeals or, in the alternative, peremptory reversal of the decision of the Court of Appeals.

ARGUMENT

THE MOTOR VEHICLE CODE DEFINES AN OPERATOR OF A MOTOR VEHICLE AS A PERSON WHO IS IN PHYSICAL CONTROL OF THE VEHICLE. WHEN DEFENDANT GRABBED THE STEERING WHEEL OF A MOVING VEHICLE FROM THE PASSENGER SEAT AND TURNED THE WHEEL, CAUSING THE VEHICLE TO VEER OFF THE ROAD, DEFENDANT WAS EXERCISING PHYSICAL CONTROL OVER THE VEHICLE AND WAS THEREFORE OPERATING THE VEHICLE.

Standard of Review: The construction of a statute is a matter of law subject to *de novo* review. *People v Jones*, 467 Mich 301, 304; 651 NW2d 906 (2002).

Discussion: This case presents an issue of first impression in this Court regarding the construction of the term "operation" of a motor vehicle in the context of the Felonious Driving statute. The issue presented is whether a passenger who grabs and turns the steering is in physical control of the vehicle and therefore an "operator" of the vehicle for purposes of the Felonious Driving statute.

In construing a statute, courts begin by examining the plain language of the statute; where that language is unambiguous, it is presumed that the Legislature intended the meaning clearly expressed. No further judicial construction is required or permitted, and the statute must be enforced as written. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). Courts are to give the words of a statute their plain and ordinary meaning, and only where the statutory language is ambiguous may the court look outside the statute to ascertain the Legislature's intent. *Turner v. Auto Club Ins. Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995); *Luttrell v Dep't of Corrections*, 421 Mich 93; 365 NW2d 74 (1984).

The Felonious Driving statute, MCL 257.626c, states that

> A person who **operates** a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property resulting in a serious impairment of a body function of a person, but does not cause death, is guilty of felonious driving . . . [Emphasis added.]

The Motor Vehicle Code, chapter 257 of the Michigan Compiled Laws, contains an express definition of the term "operate." MCL 257.35a defines "operate" as "being in actual physical control of a vehicle . . ." Similarly, MCL 257.36 defines "operator" as "every person, other than a chauffeur, who is in actual physical control of a motor vehicle."

Sections 235a and 236 do not define the term "control." Where the Legislature uses a term in a statute without providing an express definition for that term, the term is to be given its common and accepted meaning. *People v Vronko*, 228 Mich App 649, 654; 579 NW2d 138 (1998). Courts may look to dictionary definitions to determine the common meaning of a term used in a statute. *Id.* Webster's II New College Dictionary defines "control" as "to exercise authority or influence over."

Simply applying the plain language of the statutes and according the terms in the statute their common meaning, a passenger who grabs and turns the steering wheel of a moving vehicle causing the vehicle to swerve is physically "exercising . . . influence" over the vehicle and is therefore "operating" the vehicle within the meaning of MCL 257.35a and 257.36.

In the present case, the lower courts did not look to the plain language of the statutes which define "operator" and "operation" in construing that term as used in the Felonious Driving statute. Rather, the lower courts based their decisions on civil negligence and insurance cases in

which the holdings were based on civil law considerations, not solely on the statutory definitions contained in the Motor Vehicle Code.

The District Court judge based her decision on the Court of Appeals opinion in *Flager v Assoc Truck Lines, Inc,* 52 Mich App 280; 216 NW2d 922 (1974). In rendering her opinion at the preliminary examination, Judge LaVille stated:

> And the reason I believe the *Flager* case is important is because even though it was an insurance case like the other cases cited by the defendant, it used the Michigan Motor Vehicle Code in its framing of the definition of what operating a motor vehicle was. So it shows that the Courts [sic] of Appeals believe that the definition in the vehicle code is instructive in these civil cases, and they came out to the same result. Now **in *Flager*, as I said, they found that the two girls were both operators, but they key was because, citing the *Boyd* case, "There must be a community of interest in the use of a mi – of a vehicle, and that the driver is acting as the agent of the other members of the enterprise**," so in other words, they distinguish this case because the two people in operating the vehicle had the same intent, and distinguish it from the other cases where the person trying to grab the steering wheel was acting on his, or her own without the driver's consent, which I take it is the case here. [Prelim vol II: 24-25, emphasis added].

The District Court misinterpreted the holding of the *Flager* case. In *Flager*, two girls were driving a scooter designed for a single person. One of the girls was operating the steering and throttle, and the other girl was operating the brake. The scooter failed to stop at a corner and proceeded into a street where it was struck by another vehicle and one of the girls was killed. 52 Mich App at 282. *Flager* was a wrongful death action, and the issue was whether negligence by either one of the girls would bar recovery for the death. *Id.*

This Court's opinion in *Flager* did, as the District Court noted, look to the motor vehicle code definition of operation, and the Court of Appeals concluded, based on those definitions that both girls were operating the scooter: "The statute defines an 'operator' as 'every person * * * who is in actual physical control of a motor vehicle'; therefore, Vickie comes within the

definition because she was one of the persons who was in control of the motor scooter." *Id.* at 283. However the Court went on to say

> The next problem concerns the question of 'joint venture' in motor vehicle passenger cases **involving a claim of negligence.**
>
> * * *
>
> To constitute a joint enterprise between a passenger and the driver of an automobile, **within the meaning of the law of negligence**, there must be a community of interest in the use of the vehicle: there must be a finding of common responsibility for its negligent operation, and it must be found that the driver is acting as the agent of the other members of the enterprise. [*Id.* At 283-284, emphasis added, internal quotations omitted.]

The language that the District Court relied upon regarding a community of purpose and intent was not part of the Court of Appeals' determination that both girls were operators of the scooter; that language was concerned with the question of whether one girl's negligence could be imputed to the other for the purposes of allocating fault in the wrongful death suit. *Id* at 284. The District Court erred in injecting this civil law standard into the construction of the statutory definitions of operation of a motor vehicle where nothing in the plain language of the statute supports such a standard.

The portion of the *Flager* opinion which addressed the construction of the term "operator" as used in MCL 275.36 expressly held that a person could be an "operator" of a motor vehicle even if that person did not have total or exclusive control over the vehicle, and in fact supports a finding that Defendant in the present case was "operating" the vehicle when he grabbed the steering wheel. The *Flager* case is relevant and instructive on question raised in this case; the District Court's error was in failing to distinguish between the Court of Appeals' holding as to the application of the statutory definition of "operator" and the Court's subsequent

determination of whether the "operators" of the vehicle in that case were entitled to recover damages in a negligence action.

On appeal, the Circuit Court did not rely on the *Flager* case upon which the District Court based its decision; rather, the Circuit Court relied upon a civil case involving an insurance claim, *Farm Bureau v Riddering*, 172 Mich App 696; 432 NW2d 404 (1988). The *Farm Bureau* case involved the question of whether grabbing the steering wheel of a moving vehicle constituted operation of the vehicle *as that term was used in an insurance contract.* 172 Mich App at 700. The statutory definitions of "operator" and "operation" of a motor vehicle are of course not binding on the drafters of an insurance contract, nor are they binding on a court's construction of such a contract. Consequently, the Court of Appeals opinion in *Farm Bureau* does not even reference the statutory definitions. Indeed, the Court expressly found that for the purposes of an insurance contract "operation includes more than simple control," 172 Mich App at 703, while the Motor Vehicle Code expressly defines operation *as* physical control. The Circuit Court erred by relying on a case construing the term "operation" as defined by an insurance contract rather than looking to the definition adopted by the Legislature and set forth within the Motor Vehicle Code.

The Court of Appeals also found the *Riddering* case to be persuasive on the issue raised in the present case, *slip op* at 2, despite the fact that the Court acknowledged that *Riddering* addressed the question of whether a passenger who grabbed the steering wheels was "operating the vehicle **for purposes of application of an exclusionary clause in an insurance policy.**" *Id* (emphasis added). The Felonious Driving statute is a penal statute drafted by the Legislature, not an insurance contract, and the Legislature itself provided the definition of "operation" which must be applied in interpreting that statute. By relying on *Riddering* the Court of Appeals, like

the District Court, looked outside the plain and unambiguous language of the statutes enacted by the Legislature and the ordinary meaning of the words used in those statutes. The Court did not find the statutory definitions to be ambiguous, and interpretation of those definitions should therefore have been limited to the plain language of the statutes and the ordinary meanings given to the words used in those statutes. *Tryc, supra.*

In addition to its reliance on *Riddering,* the Court also looked to the words of the statute and concluded that a passenger who grabs the steering wheel of a moving vehicle cannot be found to be "in actual physical control of a vehicle" because

> Defendant could not have stopped or started the vehicle, nor could he have caused it to increase or decrease in speed. Defendant could not use any of the vehicles [*sic*] other instruments; therefore he was not in actual physical control of the vehicle. [*Slip op* at 2].

The Court of Appeals' analysis implicitly assumes that only one person can be "in actual physical control" of a vehicle – the person who controls *all* of the vehicles operations and instruments. That interpretation is not supported either by the plain language of the statutes or by case law.

MCL 257.36 expressly provides that "**every** person . . . who is in actual physical control of a motor vehicle" is an operator of the vehicle. (Emphasis added). By its terms, the statute includes circumstances where more than one person is exercising control over a motor vehicle. While Defendant in this case was not in *sole* control of the vehicle, he did exercise actual physical control when his action caused the vehicle to swerve off the roadway. In *Flager*, *supra*, the Court of Appeals expressly found that two individuals who each controlled only a portion of a vehicles functions were both "operators" of the vehicle as defined by MCL 257.36. The Court of Appeals opinion does not distinguish or even acknowledge the holding of *Flager* on this issue. "In reviewing [a] statute's language, every word should be given meaning, and [courts] should

avoid a construction that would render any part of the statute surplusage or nugatory." *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001). The Court of Appeals looked only at the language of MCL 275.35a and did not consider MCL 257.36. The Court's holding effectively negates the plain language of section 36 which states that "**every** person . . . who is in actual physical control of a motor vehicle" is an operator of the vehicle" and renders the word "every" nugatory.

In *People v Wood*, 450 Mich 399; 538 NW2d 351 (1995), this Court held that

> "operating" [in the context of MCL 275.625] should be defined in terms of the danger the OUIL statute seeks to prevent: the collision of a vehicle being operated by a person under the influence of intoxicating liquor with other persons or property. [450 Mich at 404, emphasis added.]

The goal of the felonious driving statute is similar to that of the OUIL statute – to prevent the collision of a vehicle with other persons or property. The conduct of Defendant in this case created a significant risk of causing such a collision, and did in fact cause a collision with a pedestrian, resulting in serious injuries. Defendant's intentional act of grabbing and turning the steering wheel of a moving vehicle resulted in the precise harm that the felonious driving statute is intended to prevent. Defendant's actions constituted "operating" the vehicle within the meaning of MCL 257.35a and MCL 257.36 and within the meaning of that term as construed by this Court in the context of the drunk driving statutes and by the Court of Appeals decision in *Flager, supra.*

Defendant's conduct, grabbing the steering wheel of a moving vehicle and causing it to veer off the road, falls within the statutory definition of operation of a motor vehicle. The lower courts erred in holding that Defendant's conduct could not constitute operation of the vehicle as a matter of law, and in dismissing the charges against Defendant. The People seek leave to appeal

the decision of the Court of Appeals affirming the dismissal of the Felonious Driving charge or, in the alternative, peremptory reversal of that decision.

RELIEF REQUESTED

WHEREFORE, for the reasons stated herein, the People respectfully pray that the this Court grant leave to appeal or, in the alternative, peremptorily REVERSE the decision of the Court of Appeals affirming the dismissal of the charges against Defendant, and order that the charge of Felonious Driving be reinstated.

Respectfully submitted,

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Dated: May 18, 2005

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