RECEIVED by MSC 11/5/2024 6:46:08 PM

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v. EVAN TAYLOR ARMOGEDA, Defendant-Appellant.	MSC Case No. _____ Court of Appeals No. 365184 Circuit Court No. 21-260-FC

DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

BY: Christopher B. Wickman (P75395)
Attorney for Defendant-Appellant

Nichols Law Firm, PLLC
3452 E. Lake Lansing Road
East Lansing, MI 48823
O: (517) 432-9000
F: (517) 203-4448
E: cwickman@nicholslaw.net

ORAL ARGUMENT REQUESTED IF APPLICATION OR MOAA GRANTED

RECEIVED by MSC 11/5/2024 6:46:08 PM

GROUNDS JUSTIFYING GRANT OF APPLICATION

Issue I

Conflict with *People v Geddert, People v Lockridge*, and *People v Francisco*. The Court of Appeals held that the Trial Court did not need to know the proper sentencing guidelines to assert that it would have given the same sentence no matter what the guidelines were. This contradicts this Court's directions that the guidelines, despite being advisory, must be calculated (Geddert), remain a highly relevant consideration (Lockridge), and that resentencing is required whenever the guidelines change – even if the old sentence was within the new guideline range (Francisco).

Legal Principle of Major Significance to the State's Jurisprudence: The Michigan Sentencing Guidelines are advisory but remain a highly relevant consideration to provide consistency across the state. This Court has articulated multiple times that proportionality is the proper test for the reasonableness of a sentence (*Steanhouse, Posey*) and the Court of Appeals endorsing the ability of Trial Courts to insulate any indeterminate sentence from resentencing by summarily stating that the Court would have given the same sentence without knowing or considering the guidelines violates the entire purpose of the guidelines.

Background: In the Trial Court and the Court of Appeals, the parties agreed that the guidelines were not properly calculated at Sentencing. Despite Mr. Armogeda's sentence being the mathematical center of the wrongfully calculated guidelines and despite the sentence either being an out-of-guidelines (by over 5 years) or high-guidelines sentence for the proper guidelines, the Trial Court summarily stated that it would have given the same sentence no matter what the guidelines were. The Court of Appeals, without justification, extended the Court of Appeals' exception to the rule in *Latham* to this case even though the Trial Court did not know the proper guidelines – much less consider them highly relevant.

RECEIVED by MSC 11/5/2024 6:46:08 PM

Why This Case: In this case, the parties agreed in front of the Trial Court that the guidelines were improperly calculated and the Trial Court did not calculate the correct guidelines. Furthermore, after the Court of Appeals opinion, the parties agreed on the proper guidelines and an order was entered that the properly scored guidelines made the sentence imposed an out-of-guidelines sentence by over 5 years – an increase of over 20% above the guidelines. Furthermore, the Trial Court did not engage in a substantial proportionality justification. Finally, a remand would not be futile because the visiting judge that asserted that he would have imposed the same sentence is no longer a visiting judge in Ingham County and the ultimate sentence within the properly calculated guidelines would be up to a different visiting judge.

RECEIVED by MSC 11/5/2024 6:46:08 PM

Issue II

Legal Principle of Major Significance to the State's Jurisprudence: Right to Present a Defense under the United States and Michigan Constitutions, Relevancy as a Burden to Presenting a Defense pursuant to the Mitigating Circumstances Jury Instruction.

Background: Mr. Armogeda stabbed an individual and it was captured entirely on video. The entire question for the jury was whether Mr. Armogeda's thinking was disturbed by emotional excitement to the point that an ordinary person might have acted on impulse – pursuant to the Mitigating Circumstances Jury Instruction MCJI 17.4. Mr. Armogeda testified that his thinking was disturbed by text messages that made him believe that he was not going to be able to be a parent to his unborn child and it caused him to stab the individual who he thought would be raising his child. Despite the mitigating circumstances jury instruction being agreed to by the parties and both sides addressing such extensively in their closing arguments, the Trial Court excluded significant evidence regarding Mr. Armogeda's own relationship with his absent father that shaped how he viewed being a father himself. The Court of Appeals held that there was no link between the testimony regarding Mr. Armogeda's relationship with his father and how he felt in response to being told he would not be a father to this unborn child that led to him stabbing the individual who he thought was going to be the replacement father.

Why This Case: This is an uncomplicated case (with the main crime being captured on video) to make a statement on the right to present a defense or the low burden of relevancy. The sole issue at trial was Mr. Armogeda's intent and the Trial Court excluded evidence related to that sole defense based on one of the lowest legal burdens in the legal system – relevance.

RECEIVED by MSC 11/5/2024 6:46:08 PM

Issue III

Legal Principle of Major Significance to the State's Jurisprudence: The visiting judge system that has grown more common pursuant to Michigan Constitution of 1963, Article 6, Section 23 and concerns about the separation of powers undermining coequal branches.

Background: A former District Court Judge who has been retired for over 10 years was appointed to preside over this Circuit Court trial as part of Ingham County's COVID catchup trial docket as an assignment pursuant to the Michigan Constitution. Rather than covering for an existing judge who needed assistance or who was out on leave, Ingham County created a separate "visiting judge" space and reassigned cases, including this one, from the judge to this visiting judge docket. This year-by-year judgeship was not authorized by the legislature nor filled by the Governor nor the electorate of Ingham County but operates as a fully-functional judgeship at the discretion of the Chief Judge and/or this Court. The Visiting Judge docket not only presides over cases like an elected or appointed judge, but also operates the Swift and Sure Sanctions Probation Program rather than an elected/appointed judge.

Why This Case: By information and belief, it is the sole case in which the concern of separation of powers has been raised in the Court of Appeals. The Court of Appeals asserted that the Michigan Constitution allows visiting judges to be "used broadly to provide judicial services for limited purposes." This interpretation of the Michigan Constitution's visiting judges' assignment provision and appearing limitless application usurps the "separate and coequal" branches of our government. The Governor has no ability to appoint successor visiting judges who step down and the Legislature has no ability to decide whether to allocate resources to expand the Ingham County Circuit Court. The individual also is not subject to the checks and balances of the electorate or other governing provisions.

RECEIVED by MSC 11/5/2024 6:46:08 PM

TABLE OF CONTENTS

GROUNDS JUSTIFYING GRANT OF APPLICATION....2
Issue I....2
Issue II....4
Issue III....5
APPENDICES....7
TABLE OF AUTHORITIES....8
STATEMENT OF QUESTIONS PRESENTED....10
At the Motion to Correct an Invalid Sentence, the parties disagreed about the proper sentencing guidelines range, but agreed that the range at sentencing was wrong. Did the Trial Court abuse its discretion, and did the Court of Appeals err when it extended *Latham* to cover this situation, when the Trial Court refused to resentence Mr. Armogeda when the parties agreed that the Court had relied on wrongfully calculated sentencing guidelines at sentencing?....10
Mr. Armogeda stabbed Mr. Wickizer once but said he did so while upset over believing that Mr. Wickizer, and not himself, was going to be able to parent his soon-to-be-born child with his ex-girlfriend. Did the Trial Court abuse its discretion when it refused to let witnesses testify to Mr. Armogeda's family history with his absent father and how that affected him when such was relevant to add context to whether there was adequate provocation?....10
Was Constitutional Structural Error, automatically requiring a new trial, committed when a Visiting Judge was allowed to preside over essentially a new criminal docket created by assignment in violation of the Constitutional provisions regarding the creation of a new judicial seat and without being subject to the same constitutional and lawful checks and balances as equivalent Circuit Court Judges?....10
STATEMENT OF APPELLATE JURISDICTION....11
INTRODUCTION....12
STATEMENT OF FACTS....13
ARGUMENT....27
I. The Trial Court abused its discretion by denying Mr. Armogeda's Motion to Correct Invalid Sentence and refusing to resentence Mr. Armogeda when the parties agreed that the applicable Sentencing Guidelines changed from in the Presentence Investigation Report. The Court of Appeals erred requiring this Court to step in when it extended *Latham* to a case that was not comparable....27
Issue Preservation....27
Standard of Review....27
Defendant-Appellant's Argument....27
Relief Requested....31
II. The Trial Court abused its discretion by refusing to allow witnesses to testify to Mr. Armogeda's relationship with his father, holding such was irrelevant, despite the jury having to determine whether Mr. Armogeda specifically was adequately provoked by being told he was not going to be able to be a father to his unborn child....32
Issue Preservation....32

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Standard of Review 32
Defendant-Appellant's Argument 33
III. Ingham County's creation of a new judicial seat, using the process of a temporary assignment, due to a desire to catch up on trials delayed by the COVID-19 pandemic was unconstitutional and was structural error that invalidates Mr. Armogeda's trial 41
Issue Preservation 41
Standard of Review 41
Defendant-Appellant's Argument 41

APPENDICES

Appendix A – Judgment of Sentence
Appendix B – Claim of Appeal and Order Appointing Undersigned Counsel
Appendix C – Order Denying Motion for New Trial
Appendix D – Order Denying Motion to Correct Invalid Sentence/Resentencing
Appendix E – Presentence Interview Report
Appendix F – Motion to Correct an Invalid Sentence/Resentencing with Exhibits
Appendix G – Motion for New Trial with Exhibits
Appendix H – Plaintiff's Response to Motion to Correct an Invalid Sentence and New Trial
Appendix I – Defendant's Reply on Motion to Correct an Invalid Sentence/Resentencing
Appendix J – Stipulation and Order Setting Correct Michigan Sentencing Guidelines Post-Remand to the Trial Court
Appendix K – Court of Appeals Opinion

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

TABLE OF AUTHORITIES

Cases

Hackett v Kress, 1 Mich App 6 (1965) 42
Holmes v South Carolina, 547 US 319 (2006) 34
Makowski v Governor, 299 Mich App 166 (2012) 41
Neder v US, 527 US 1 (1999) 39
Pennsylvania v Ritchie, 480 US 39 (1987) 35
People v Booker, 208 Mich App 163 (1994) 42
People v Carines, 460 Mich 750 (1999) 28
People v Crawford, 458 Mich 376 (1998) 31, 33
People v Denson, 500 Mich 385 (2017) 28
People v Dixon-Bey, 321 Mich App 490 (2017) 27
People v Duncan, 462 Mich 47 (2000) 38, 39
People v Fleming, 185 Mich App 270 (1990) 38
People v Francisco, 474 Mich 82 (2006) 21, 24, 25
People v Hackett, 421 Mich 338 (1984) 30
People v Kevorkian, 248 Mich App 373 (2001) 37
People v Latham, 334 Mich App 501 (2020) 24, 25, 26
People v Leffew, 508 Mich 625 (2022) 34
People v Lockridge, 498 Mich 358 (2015) 27
People v Mutchie, 468 Mich 50 (2003) 25
People v Odom, 327 Mich App 297 (2019) 26
People v Pennington, 323 Mich App 452 (2018) 32
People v Pouncey, 437 Mich 382 (1991) 32
People v Sabin, 242 Mich App 656 (2000) 23
People v Sardy, 216 Mich App 111 (1996) 37, 42, 43
People v Smith, 482 Mich 292 (2008) 27
People v Stanaway, 446 Mich 643 (1994) 35
People v Steanhouse, 500 Mich 453 (2017) 26
People v Waterstone, 296 Mich App 121 (2012) 23, 37
Rock v Arkansas, 483 US 44 (1987) 35
Tumey v Ohio, 273 US 510 (1927) 39
US v Agurs, 427 US 97 (1976) 35
Washington v Texas, 388 US 14 (1967) 34

Constitutions and Other Authorities

Const. 1963, art. 1, §13 34
Const. 1963, art. 3, §2 40
Const. 1963, art. 3, §23 40
Const. 1963, art. 6, §19 42
Const. 1963, art. 11, §7 44
M Crim JI 17.4 ..... 16, 31
US Const, Am VI 34
US Const, Am XIV 34

Rules

MCR 7.303 7
MCR 7.305 7

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

MRE 401 30
MRE 402 34

RECEIVED by MSC 11/5/2024 6:46:08 PM

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

STATEMENT OF QUESTIONS PRESENTED

1. At the Motion to Correct an Invalid Sentence, the parties disagreed about the proper sentencing guidelines range, but agreed that the range at sentencing was wrong. Did the Trial Court abuse its discretion, and did the Court of Appeals err when it extended *Latham* to cover this situation, when the Trial Court refused to resentence Mr. Armogeda when the parties agreed that the Court had relied on wrongfully calculated sentencing guidelines at sentencing?

   Defendant-Appellant states, "Yes."
   Plaintiff-Appellee states, "No."
   Trial Court states, "No."

2. Mr. Armogeda stabbed Mr. Wickizer once but said he did so while upset over believing that Mr. Wickizer, and not himself, was going to be able to parent his soon-to-be-born child with his ex-girlfriend. Did the Trial Court abuse its discretion when it refused to let witnesses testify to Mr. Armogeda's family history with his absent father and how that affected him when such was relevant to add context to whether there was adequate provocation?

   Defendant-Appellant states, "Yes."
   Plaintiff-Appellee states, "No."
   Trial Court states, "No."

3. Was Constitutional Structural Error, automatically requiring a new trial, committed when a Visiting Judge was allowed to preside over essentially a new criminal docket created by assignment in violation of the Constitutional provisions regarding the creation of a new judicial seat and without being subject to the same constitutional and lawful checks and balances as equivalent Circuit Court Judges?

   Defendant-Appellant states, "Yes."
   Plaintiff-Appellee states, "No."
   Trial Court states, "No."

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

STATEMENT OF APPELLATE JURISDICTION

The Michigan Supreme Court may review by appeal a case after a decision by the Court of Appeals. MCR 7.303(B)(2). An application for leave to appeal must be filed within 56 days in a criminal case after the Court of Appeals opinion resolving an appeal. MCR 7.305(C)(2)(a).

Mr. Armogeda was sentenced on February 14, 2023. The judgment of sentence is attached as **Appendix A**. A claim of appeal and order appointing undersigned counsel was signed on February 27, 2023. Such is attached as **Appendix B**. Mr. Armogeda timely filed Motions for New Trial and to Correct an Invalid Sentence. The Trial Court denied the Motions. The case was briefed in the Court of Appeals and the Court of Appeals issued an unpublished opinion denying the appeal on October 4, 2024, but remanding to the Trial Court for the calculation of the proper guidelines. The parties agreed on remand that the Defense's proposed sentencing guidelines were correct, making the sentence upheld an out-of-guidelines sentence by over five years. This Application for Leave to Appeal is filed within 56 days of the Court of Appeals opinion pursuant to MCR 7.305(C)(5)(a).

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

INTRODUCTION

After a jury trial, Mr. Armogeda was convicted of Assault with Intent to Murder, Carrying a Dangerous Weapon with Unlawful Intent, and Fleeing and Eluding a Police Officer – Third Degree related to the events of January 11, 2021. Many facts were undisputed at trial because the main events leading to these charges were on video. It was undisputed that Mr. Armogeda stabbed the victim Zachary Wickizer once with a knife. Prior to the stabbing, Mr. Armogeda's ex-girlfriend (who was pregnant with his child), Ms. Abby O'Connor, and Mr. Wickizer had repeatedly texted Mr. Armogeda in an antagonizing manner that led Mr. Armogeda to believe that he would not be able to be a father to his child, but that Mr. Wickizer would instead. After the stabbing, Mr. Armogeda returned to the area of his home. When law enforcement quickly responded to his home, Mr. Armogeda briefly attempted to evade law enforcement before stopping his vehicle and being arrested without incident.

The questions at trial were: (1) whether Mr. Armogeda intended to kill Mr. Wickizer; and (2) whether, pursuant to Michigan Criminal Jury Instruction 17.4, there was adequate provocation that Mr. Armogeda's actions would have constituted manslaughter, instead of murder, if Mr. Wickizer had died from his injury. At trial, Mr. Armogeda asserted that his thinking at the time of the stabbing was disturbed by the messages and images from Ms. O'Connor and Mr. Wickizer that made him believe that she was now with Mr. Wickizer and that Mr. Wickizer, and not himself, would be raising his child. He testified to how his mental health conditions affected him. He testified he did not plan to kill Mr. Wickizer and did not think his actions would kill him. Mr. Armogeda attempted to introduce why the messages "made him feel like he was falling apart from the inside out" based on his own relationship with his father and Mr. Armogeda's mental health related to such, but the Trial Court severely limited such introduction holding such was irrelevant.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

STATEMENT OF FACTS

Years before this incident, Mr. Armogeda and Ms. O'Connor met through a mutual friend – Ms. Ashley Pfister – and began an online romantic relationship. 12-09-22 T. at 26:22-27:10. Mr. Armogeda moved back to Michigan specifically to have a romantic relationship with Ms. O'Connor. 12-09-22 T. at 51:8-11. At the time he moved to Michigan, it was after a year and a half of talking and, at the time of the move, Mr. Armogeda believed that he was in love with Ms. O'Connor. 12-09-22 T. at 46:2-21. He lived with Ms. O'Connor for a short time before he moved out. 12-09-22 T. at 27:15-28:2. At the time their relationship was ending, Ms. O'Connor found out she was pregnant and told Mr. Armogeda. 12-09-22 T. at 28:23-29:8, 12-09-22 T. at 46:22-47:4. Before any child was born (if the child was born), the incident occurred on January 11, 2021. 12-08-22 T. at 20:21-23:6.

The night of the incident, Mr. Armogeda asked Ms. Pfister to come over because he needed a friend. 12-08-2022 T. at 253:6-9. In the weeks leading up to the incident, there were numerous upsetting messages sent by Ms. O'Connor and Mr. Wickizer to Mr. Armogeda. 12-08-2022 T. at 255:16-21, 12-12-2022 T. at 51:24-52:10. When Ms. Pfister arrived at Mr. Armogeda's apartment the night of the incident, these messages had him severely upset. 12-08-2022 T. at 255:11-15. Mr. Armogeda told her that he was having a mental breakdown due to the messages. 12-08-2022 T. at 267:19-6, 12-08-2022 T. at 279:8-12. When he reached out to Ms. Pfister, Mr. Armogeda testified he was not thinking straight and was panicked, in a frenzied state of anxiety, suicidal at one point, scared, and felt that he was falling apart from the inside out. 12-12-2022 T. at 52:23-53:9. He felt this way because of the arguments between Ms. O'Connor and himself and because he felt bombarded by messages and phone calls from Ms. O'Connor and Mr. Wickizer. 12-12-22 T. at 53:10-15.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

There was contrary testimony about the nature of the messages between Mr. Armogeda, Ms. O'Connor, and Mr. Wickizer leading up to the incident. Ms. O'Connor testified that she told Mr. Armogeda that he could be part of the baby's life, but that she did not want a relationship with him. 12-09-22 T. at 29:12-19. She testified she didn't want to talk to him except with regards to the baby. 12-09-22 T. at 31:24-33:9. Contrarily, Mr. Armogeda testified that Ms. O'Connor was only sometimes supportive of him being an active father which caused him to feel hurt, frustrated, and heartbroken. 12-09-22 T. at 47:8-15. In their time talking, he reported there would be a three-week period back and forth where one day they would be okay and the next day they would not be. 12-12-22 T. at 54:8-12. Mr. Armogeda testified he planned to be an active father to his child with Ms. O'Connor. 12-12-2022 T. at 47:5-7. He testified he had a difficult time trying to be a father to his other children, but he saw this as an opportunity to break that cycle and wanted to be a better father than his father was to him. 12-12-2022 T. at 44:23-45:2. Mr. Armogeda testified his strained relationship with his own father continued to impact him as an adult. 12-12-2022 T. at 44:16-18.

It was undisputed that Mr. Armogeda stated in these messages that Mr. Armogeda was upset about Mr. Wickizer raising his baby (12-09-2022 T. at 138:24-139:5), but Mr. Wickizer denied ever saying such to Mr. Armogeda (12-09-2022 T. at 139:6-11). It is also undisputed between the parties that these messages included talking about Mr. Armogeda and Mr. Wickizer fighting without weapons in messages sent on the same date as the incident. 12-09-2022 T. at 137:4-7, 12-09-2022 T. at 140:10-19, 12-08-2022 T. at 250:17-251:5. It was also undisputed that the messages sent shortly before the incident included Mr. Wickizer sending Mr. Armogeda a picture of Ms. O'Connor and Mr. Wickizer together with "kissy face" emojis and a picture of Ms. O'Connor kissing Mr. Wickizer on the cheek before Mr. Armogeda allegedly blocked him for sending such (12-09-2022 T. at 137:17-138:6, 12-09-2022 T. at

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

141:16-18). These messages made Mr. Armogeda feel betrayed, hurt, and devastated. 12-12-2022 T. at 100:11-16. Mr. Armogeda estimated that there were probably 50 messages exchanged with Mr. Wickizer and Ms. O'Connor in the three days before the incident. 12-12-2022 T. at 105:9-106:9.

Ms. Pfister tried to keep Mr. Armogeda at his apartment to try to keep him calm. 12-08-2022 T. at 265:21-266:9. Mr. Armogeda had a knife on the counter from cutting pizza and eating earlier in the day (12-12-2022 T. at 103:5-104:5) that he kept picking up and putting down while talking (12-08-2022 T. at 257:15-20). Before leaving the apartment, Mr. Armogeda asked Ms. Pfister to watch his dogs and said that he would be right back. 12-08-2022 T. at 259:15-21. Mr. Armogeda never mentioned murdering anyone (12-08-2022 T. at 277:8-17) but did tell Ms. Pfister he was going to stab [Mr. Wickizer] (12-08-2022 T. at 280:8-10).

When Mr. Armogeda arrived at Ms. O'Connor's house to confront Mr. Wickizer, Ms. O'Connor, Mr. Wickizer, and three other individuals were present. 12-09-2022 T. at 36:5-11. Video surveillance footage from the residence captured the whole incident on camera. 12-08-2022 T. at 31:13-19. The video showed Mr. Wickizer standing outside of a white vehicle when Mr. Armogeda arrived and parked his vehicle. 12-08-22 T. at 50:16-20. Mr. Wickizer was standing with Ms. O'Connor and one other individual by the vehicle talking to two others in the vehicle when Mr. Armogeda parked his vehicle. As Mr. Armogeda got out of his vehicle, Mr. Armogeda allegedly said "fighting words" to Mr. Wickizer. 12-08-2022 T. at 173:16-174:4. Mr. Armogeda did not say anything at the scene about killing Mr. Wickizer. 12-08-2022 T. at 73:23-74:1. It looked like Mr. Armogeda was walking up getting ready to fight, but with his hand behind his back. 12-08-2022 T. at 174:5-7, 12-12-22 T. at 59:18-22. Mr. Wickizer denied inviting Mr. Armogeda to come over to fight (12-09-2022 T. at 12-09-22 T. at 141:7-15, 12-09-2022 T. at 141:19-22), but other witnesses testified that Mr. Wickizer seemed to know Mr.

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Armogeda was coming (12-09-2022 T. at 19:21-24). Further contradicting Mr. Wickizer's testimony, Mr. Armogeda testified that Ms. O'Connor had told him to come over that day and get beat up. 12-12-22 T. at 69:15-21.

As Mr. Armogeda reached Mr. Wickizer, Mr. Wickizer hit Mr. Armogeda as Mr. Armogeda made physical contact with Mr. Wickizer's torso. 12-09-2022 T. at 149:17-22. Mr. Wickizer thought at first that Mr. Armogeda was trying to shove him, but he soon felt himself bleeding from his chest (12-09-2022 T. at 149:23-150:1, 12-08-2022 T. at 151:18-24) and told everyone he was stabbed and walked into the house (12-09-2022 T. at 150:10-13). According to Mr. Armogeda, he held the knife behind his back when he approached Mr. Wickizer because he was not thinking straight, and all his emotions were welling up. 12-12-2022 T. at 59:18-22. Mr. Armogeda testified that he stabbed Mr. Wickizer only once intentionally and that he did not stay around to help because Mr. Wickizer was still on his feet, was still talking, and Mr. Armogeda knew he would be safe and taken care of by the others there. 12-12-2022 T. at 60:2-15. He testified he did not plan to murder Mr. Wickizer but did intend to injure him when he stabbed him. 12-12-2022 T. at 62:23-63:3. His intent was to make somebody feel the hurt he was feeling. 12-12-2022 T. at 93:25-94:1. He testified that he stabbed him because of the emotional turmoil he was feeling about having failed his son, done the best he could with his daughter, and because he didn't want this unborn child to feel unloved, feel neglected, or have an absent parent. 12-12-2022 T. at 98:13-23.

After Mr. Wickizer was stabbed, Ms. O'Connor saw a "very large steak knife" in Mr. Armogeda's hand (12-09-22 T. at 46:14-23) and she (and another individual) chased after Mr. Armogeda and his car because the police needed to come and arrest him (12-09-2022 T. at 47:9-18). The other individual followed Mr. Armogeda in his vehicle (12-08-2022 T. at 178:6-12), eventually saw him get out of his vehicle (12-08-2022 T. at 178:25-179:9) and returned to

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

the scene to tell the police where Mr. Armogeda was (12-08-2022 T. at 181:24-182:7). Law enforcement was quickly called (12-09-2022 T. at 48:21-23) and arrived at Ms. O'Connor's home and provided medical care until emergency medical personnel arrived. 12-08-2022 T. at 20:21-21:3, 12-08-2022 T. at 23:3-6, 12-08-2022 T. at 25:12-15, 12-08-2022 T. at 29:22-30:7.

Emergency medical professionals applied gauze and other medical supplies to attempt to stop the bleeding. 12-08-2022 T. at 152:24-153:8. Mr. Wickizer was put on a [stretcher] and taken out of the home to the ambulance. 12-08-2022 T. at 153:12-154:3. In the ambulance, intravenous catheterization was initiated and vital signs were monitored. 12-08-2022 T. at 154:5-11. His transport was the highest level based on company and state protocols based on the type of injuries. 12-08-2022 T. at 154:19-155:10. The entry wound was approximately one inch in length. 12-08-2022 T. at 162:20-23.

When Mr. Wickizer arrived at the hospital, he arrived as a trauma one reflecting potential life or limb-threatening injury. 12-09-2022 T. at 89:5019. Vital signs and blood tests indicated that Mr. Wickizer could have a life-threatening problem potentially. 12-09-2022 T. at 90:21-91:4, 12-09-2022 T. at 91:25-92:6, 12-09-2022 T. at 92:18-4. With an injury like Mr. Wickizer's, without regard to the size of the instrument, protocol requires that medical personnel cut open the individual and look at everything in the belly. 12-09-2022 T. at 98:23-99:12. This is because there is a concern that any of the organs could have been impacted based on the injury observed. 12-09-2022 T. at 100:1-5. An exploratory laparotomy was performed, and it was discovered that there was no damage to the organs and no damage to the peritoneum, but that there was an injury to the muscle. 12-09-2022 T. at 101:17-25, 12-09-2022 T. at 104:25-105:1, 12-09-2022 T. at 105:5-8. Since he did not have a severe injury to his organs, Mr. Wickizer was simply stitched up and stapled shut. 12-09-2022 T. at 106:14-24. Mr.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Wickizer was discharged from the hospital after being in the hospital for four days following the exploratory laparotomy. 12-09-2022 T. at 107:17-18.

After law enforcement was called, multiple officers sought to locate Mr. Armogeda and eventually located a vehicle and person matching the description given. 12-08-2022 T. at 200:17-24. The vehicle sped up rapidly through the parking lot (12-08-2022 T. at 200:17-24), did not originally stop when an officially marked police vehicle initiated its overhead lights and sirens (12-08-2022 T. at 203:5-19), and turned off its lights and went into the opposite lane of travel (12-08-2022 T. at 223:13-224:7). Mr. Armogeda eventually stopped the vehicle and complied with verbal commands to exit the vehicle and get on the ground before being arrested without incident. 12-08-2022 T. at 208:3-11, 12-08-2022 T. at 208:18-209:15.

Trial Court's Decisions Excluding Proposed Evidence by the Defense

During opening statements, Defense Counsel told the jury that Ms. O'Connor and Mr. Wickizer knew Mr. Armogeda and his background and knew how to get him into an "emotionally heightened state." 12-08-2022 T. at 13:1-13. Defense Counsel described what happened as "an emotional response to relentless weeks, months of torment by Zackary Wickizer, someone he considered a friend, and the woman he was led to believe was carrying his child." 12-08-2022 T. at 13:17-21.

During the testimony of Ms. O'Connor, she admitted that she had discussed Mr. Armogeda's childhood and how it made Mr. Armogeda feel and Ms. O'Connor described him as not getting along with his father. 12-09-2022 T. at 54:20-55:4. When Mr. Armogeda's aunt testified, the Court did not allow her to testify that Mr. Armogeda's father was absent from his life after he was born. 12-12-2022 T. at 14:23-16:13. The Plaintiff objected as to relevance and Defense Counsel articulated that such background was relevant and necessary to explain why Mr. Armogeda was in such a charged state at the time of the incident in response to the

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

taunting from his pregnant ex-girlfriend who he believed was not going to allow him to be in his child's life in favor of Mr. Wickizer. 12-12-2022 T. at 14:25-16:9. The objection was sustained.

In response to a later question about what Mr. Armogeda's feelings were with regards to starting a new life in Michigan, the witness stated:

> He was excited. He was – in his mind, he was starting a new life. It was, you know, something he could do that he wasn't able to do when he was here in California. You know, he's always wanted a family, and our family hasn't been – well, most of my family has passed away, but they weren't always supportive of him, so it's nice for him to have that goal, and I appreciate that. Everybody wants to belong and have a family, and he had it with my daughters and I, but it wasn't, like, his family, so he was excited to be able to be a dad himself and do a better job than what his father had done with him and how he was raised.

12-12-2022 T. at 23:1-15. The Plaintiff objected asking the testimony to be stricken regarding "better than his father had done and how he had been raised" on the basis that the court had already ruled that that information is irrelevant. 12-12-2022 T. at 23:16-20. The Trial Court instructed the jury to disregard that information. 12-12-2022 T. at 23:23-25. When Mr. Armogeda himself testified, Plaintiff again objected when asked about whether his relationship with his father continued to impact him as an adult, but the Trial Court overruled the objection stating, "Well, I'll allow an answer to this question, and we'll see how far it goes." 12-12-2022 T. at 43:7-44:18. Defense Counsel did not attempt to take it further than that based on the Trial Court's rulings regarding the irrelevance of his relationship with his father and how it affected him viewing himself as a parent to the child he would share with Ms. O'Connor.

Although the Plaintiff objected when Mr. Armogeda's family history was brought up, the Plaintiff intentionally elicited testimony attempting to attack the evidence that Defense Counsel sought to establish. Questioning Mr. Armogeda's aunt, the Plaintiff elicited testimony that Mr. Armogeda had two previous children that were not living with him when he left California. 12-12-2022 T. at 30:1-14. The Plaintiff also elicited testimony that Mr. Armogeda

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

was "hardly involved with his two children at all." 12-09-2022 T. at 81:22-82:3. The Defendant did not object to such.

The Trial Court also limited Mr. Armogeda's introduction of evidence regarding his mental health. The Trial Court refused to allow Mr. Armogeda's aunt (12-12-2022 T. at 10:10-11:24) and Mr. Armogeda (12-12-22 T. at 54:13-20) to testify to his mental health disorders. Mr. Armogeda was able to testify that he had a lot of emotions, struggled to process, and felt panicked, frenzied, and scared at times during his entire life. 12-12-22 T. at 88:23-89:4. He also testified that because of his lifelong struggles with his feelings, thoughts, and emotions, there were days he could not get any work done and where he couldn't attend class due to anxiety, depression, and suicidal thoughts. 12-12-22 T. at 96:11-22. He testified his anxiety was debilitating and caused racing thoughts, made him feel insecure, and made him feel crazy. 12-12-22 T. at 96:24-97:6. Mr. Armogeda described his depression as causing days when he just shut the blinds, stayed in bed, put the phone on silent, and the best thing that he could do was eat and go to the bathroom. 12-12-22 T. at 97:7-18. Mr. Armogeda also testified that this has been going on in his entire life including when he was dating Ms. O'Connor. 12-12-22 T. at 97:19-98:4. Finally, Mr. Armogeda testified that multiple things have helped with his mental health, including medication. 12-12-22 T. at 98:5-12.

Jury Instructions and Closing Arguments

During jury instructions, the jury was given a jury instruction on a lesser offense of Assault with Intent to Commit Great Bodily Harm. 12-13-2022 T. at 97:8-22. The jury was also given jury instruction 17.4 titled, "Mitigating Circumstances." 12-13-2022 T. at 98:18-99:20. Jury instruction 17.4 as read states the following:

M Crim JI 17.4 Mitigating Circumstances

(1)The defendant can only be guilty of the crime of assault with intent to commit murder if he would have been guilty of murder had the person he assaulted

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

actually died. If the assault took place under circumstances that would have reduced the charge to manslaughter if the person had died, the defendant is not guilty of assault with intent to commit murder.

(2)Voluntary manslaughter is different from murder in that for manslaughter, the following things must be true:

(3)First, when the defendant acted, his thinking must have been disturbed by emotional excitement to the point that an ordinary person might have acted on impulse, without thinking twice, from passion instead of judgment. This emotional excitement must have been caused by something that would cause an ordinary person to act rashly or on impulse. The law does not say what things are enough to do this. That is for you to decide. If the defendant is mentally or emotionally impaired in some way, you may consider that.

(4)Second, the killing itself must have resulted from this emotional excitement. The defendant must have acted before a reasonable time had passed to calm down and before reason took over again. The law does not say how much time is needed. That is for you to decide. The test is whether a reasonable time passed under the circumstances of this case.

(5)If you find that the crime would have been manslaughter had the person died, then you must find the defendant not guilty of assault with intent to murder.

Trial Counsel for both parties addressed this instruction at length in closing arguments. Plaintiff argued for premeditation showing that it was not a crime of passion/in response to provocation. 12-13-2022 T. at 18:5-40:3.

In closing argument, Defense Counsel did not argue against the Fleeing and Eluding Charge and only briefly addressed the Carrying with Unlawful Intent charge. 12-13-2022 T. at 45:2-5. Defense Counsel's focus almost entirely during closing argument was on the intent to kill and the mitigating circumstances instruction. Defense Counsel repeatedly brought up that he was not allowed to delve into Mr. Armogeda's family background. 12-13-2022 T. at 50:11-51:6, 12-13-2022 T. at 53:18-54:1, 12-13-2022 T. at 57:14-58:4, 12-13-2022 T. at 60:20-22, 12-13-2022 T. at 61:10-15. Such was not objected to by the Plaintiff. Defense Counsel argued that the mental health symptoms that Mr. Armogeda had been permitted to testify to and his lack of relationship with his father and how it affected how he felt about potentially being

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

denied the ability to be a father to his child with Ms. O'Connor. Defense Counsel also explicitly addressed the Mitigating Circumstances instruction. 12-13-2022 T. at 66:20-68:5.

In rebuttal closing argument, the Plaintiff argued that her objections and what comes in was based on the Court Rules and Rules of Evidence and it was not intended to hide any information. 12-13-2022 T. at 75:16-76:16. Despite arguing such was irrelevant during trial, Plaintiff conceded in rebuttal argument that "that this defendant may have a rough childhood" and "that this defendant may have been suffering from anxiety or depression" lends to the mitigating circumstances instruction and that the jury could consider "whether or not the defendant was under some sort of emotional stress." 12-13-2022 T. at 82:23-83:8.

After over three hours of deliberations, the jury returned three guilty verdicts as charged. 12-13-2022 T. at 108:16-109:3.

Sentencing and PRV 2 Issues

Mr. Armogeda's sentencing guidelines were calculated by the Michigan Department of Corrections as 270-450 months/Life for the AWIM, 22-38 months for the CWUI, and 12-24 months for the F&E-3rd. Appendix E. The Plaintiff did not object to the scoring of the guidelines by the Michigan Department of Corrections. 02-14-23 T. at 9:12-10:9. Defense Counsel objected to the scoring of OV3, OV6, and OV19 but did not object to the scoring of any other offense variable. 02-14-23 T. at 10:17-30:15. With regards to the PRV scoring, the Plaintiff indicated she had done research on the scoring of the California convictions and stated that Defense Counsel "didn't find anything to substantiate a claim that they were not scored correctly." 02-14-23 T. at 31:14-32:4**.** When asked if he agreed, Defense Counsel stated:

> Yes. Although I would say that there are offenses in Mr. Armogeda' s criminal history which originate in California where we don't know what some of the substances were. But I know that during the relevant time frame he was using a variety of drugs. And while some – depending on what the substance may have been, some of them have changed today and are no longer felonies and some that would be misdemeanors in California would be felonies here because

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

> possession of heroin, methamphetamine, or cocaine here in Michigan is a felony. So there is not a clear line.
>
> Again, I don't have the case that I can hang my hat on to say that the number of misdemeanors or felonies based on a particular statute is incorrect. So I will leave it at that.

02-14-23 T. at 32:5-25. In response, the Trial Court stated, "Leave it at that. And I will accept them as reported then. I appreciate the researching of those items. Okay." 02-14-23 T. at 33:1-3. Defense Counsel did not respond to such.

According to the Presentence Interview Report (PSIR), Mr. Armogeda had 13 prior felony convictions. Appendix E at 1. These felony convictions were adult history records 4, 5, 6, 7, 8, 9, 11 (2), 12 (2), 13, 14, and 15. Appendix E at 5-10. These convictions were for: (1) Possession of Narcotic Controlled Substance (3, 5, 8, 9, 11, 13, 14, 15); (2) Possession of Controlled Substance (2, 11, 12(2)); or (3) Possession of Marijuana for Sale (7). Appendix E at 5-10**.** All these convictions were from the State of California in Huntington Beach, Casosanta, Westminster, Fullerton, or Newport Beach – all in Orange County. Appendix E at 5-10.

Prior to sentencing, the Plaintiff obtained a summary of Mr. Armogeda's criminal history and provided it to the parties. Exhibit C to Appendix F. Such summary showed several Misdemeanor and Infraction entries with two cases listing "Felony" as the Case Type. Exhibit C to Appendix F. Neither of those marked felonies are felony convictions which are countable/were counted by the Trial Court in sentencing Mr. Armogeda because one was dismissed and the other is not a separate offense – but instead reflects violation of post release community supervision. Exhibit C to Appendix F. Undersigned Defense Counsel brought a timely Motion for Resentencing (Appendix F) addressing the issue of the prior felonies in California alleging that all the felonies scored in PRV 2 were actually misdemeanors under California law, and therefore not scorable as felonies in Michigan even though they would be

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

felonies in Michigan. Mr. Armogeda was already scored the maximum amount of points for misdemeanor convictions so additional misdemeanors did not matter. Appendix E. When scored as misdemeanors instead of Low Severity Felonies, Mr. Armogeda's guidelines on the AWIM would appropriately have been reduced to 171-285 months without an option for a life minimum sentence.

Based on the articulated guidelines, Mr. Armogeda was sentenced to 360-600 months (30-50 years) on his AWIM conviction, 22-60 months on his CWUI, and 12-60 months on his F&E-3rd convictions. Appendix A. This reflected the exact middle of the guidelines on the AWIM conviction and the bottom of the guidelines on the CWUI and F&E-3rd convictions. Appendix E at 21-23.

Motion to Correct an Invalid Sentence

Undersigned Defense Counsel filed a timely Motion to Correct an Invalid Sentence (along with a timely Motion for New Trial) alleging that PRV 2 should be 0 points instead of 30 points because the California convictions that would be felonies in Michigan were misdemeanors in California and therefore did not fit the definition of prior low severity felonies under Michigan law. Exhibit F. Undersigned Defense Counsel also alleged that OV 12 should have been scored at 0 instead of 10 points – although such did not change the guideline range on its own. Appendix F.

In their response, Plaintiff alleged (in part) that since the punishment for these convictions (numbered 4, 7, 8, and 11 of 31) was for more than a year, the Trial Court must consider them felonies under the law. Appendix H. Seeking leave of the Circuit Court (granted without objection at the Motions hearing), Undersigned Defense Counsel filed a reply brief attaching a California appellate opinion finding that Mr. Armogeda's conviction numbered 8

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

of 31 was reclassified to a misdemeanor. Appendix I. Plaintiff agreed about the scoring of OV 12. Appendix H.

At the Motions hearing, the Plaintiff argued for the first time that Mr. Armogeda had, according to LEIN, three (instead of four or more) low severity felony convictions and that his guidelines should be reduced to 225 to 375 months. 08-14-2023 T. at 25:4-11. Plaintiff identified those as convictions 4, 7, and 11 (unclear which) of 31 from the PSIR. 08-14-2023 T. at 23:25-24:20. Undersigned Defense Counsel continued to argue that the records before the Court indicated that all the convictions alleged were actually misdemeanors and that, even if the Plaintiff was correct and there were three prior low severity felony convictions instead of four or more, the guidelines changed and pursuant to *People v Francisco*, 474 Mich 82, 711 NW2d 44 (2006), Mr. Armogeda was entitled to resentencing. 08-14-2023 T. at 30:4-31:25. The Trial Court denied resentencing because: (1) the sentencing guidelines are advisable; and (2) even if the guidelines were lower, the Trial Court indicated that 360 months is the lowest that it felt was appropriate in their discretion. 08-14-2023 T. at 32:12-34:11.

Motion for New Trial

Along with Undersigned Counsel's Motion to Correct an Invalid Sentence, a Motion for New Trial was filed – attached as Appendix G. In that Motion for New Trial, it was alleged that the assignment of the visiting judge who presided over Mr. Armogeda's trial was unconstitutional and a violation of the separation of powers in the Michigan Constitution. Appendix G. The Motion argued that the visiting judges were not assigned to cover an existing docket, but instead functioning as the creation of a new judicial seat but not subject to the age limitation of the Michigan Constitution and without being elected by the citizens of Ingham County as required by law or appointed by the governor as applicable to vacancies. In its Response, Plaintiff attached documentation to show that the visiting judge had been assigned

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

to "assist with docket" and had been assigned Mr. Armogeda's case pursuant to the typical temporary assignment process. Appendix H.

The Visiting Judge denied the Motion for New Trial and denied that there was any reason for an evidentiary hearing given the evidentiary documentation provided by the Plaintiff and his own fact representations on the record. 08-14-2023 T. at 12:21-15:1.

Obtaining Certified Records of Conviction from California

After Plaintiff indicated that LEIN contradicted the Register of Actions and indicated that some of Mr. Armogeda's prior felonies had not been reduced, the parties entered a stipulation and order and completed the paperwork required by the State of California Department of Justice to obtain certified records of conviction for Mr. Armogeda. These records were admitted in the expanded record by the Court of Appeals, but the Court of Appeals declined to address the issue of whether these were prior low severity convictions and instead remanded the case to the Trial Court to determine such.

Court of Appeals Decision and Remand

The Court of Appeals denied the Appeal on all three grounds but remanded to the Trial Court for calculation of the proper Michigan Sentencing Guidelines. By stipulation and order, the parties agreed that Mr. Armogeda did not have any prior low severity felonies and that the proper guidelines were as alleged by the Defense on the AWIM (171-285 months) making the 360 months an outside of guidelines sentence. Appendix J.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

ARGUMENT

I. The Trial Court abused its discretion by denying Mr. Armogeda's Motion to Correct Invalid Sentence and refusing to resentence Mr. Armogeda when the parties agreed that the applicable Sentencing Guidelines changed from in the Presentence Investigation Report. The Court of Appeals erred requiring this Court to step in when it extended *Latham* to a case that was not comparable.

Issue Preservation

4. Sentencing guidelines scoring is properly preserved for appeal if it is raised at issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the Court of Appeals. MCR 6.429(C). A Motion to Correct Invalid Sentence/Resentencing was filed in the Trial Court and denied by the Trial Court. Appendix F, Appendix D. This argument was also rejected by the Court of Appeals in its written opinion.

Standard of Review

5. Sentencing issues are reviewed by the Court of Appeals for an abuse of discretion by the trial court. *People v Sabin*, 242 Mich App 656, 660; 620 NW2d 19 (2000). A trial court abuses its discretion when it selects an outcome outside the range of reasonable and principled outcomes. *People v Sabin*, 242 Mich App 656, 660; 620 NW2d 19 (2000). When a Court makes an error of law, it necessarily abuses its discretion. *People v Waterstone*, 296 Mich App 121, 132; 818 NW2d 432 (2012).

Defendant-Appellant's Argument

Mr. Armogeda filed a Motion to Correct an Invalid Sentence because the convictions in California that were once felony convictions had been reclassified as misdemeanors after the passage of Proposition 47, but prior to the convictions in this case, and were required to be considered misdemeanors "for all purposes except the right to own or possess firearms." These convictions were nonetheless counted as Prior Low Severity Felony Convictions in scoring 30 points for PRV2 in Mr. Armogeda's PSIR. After the parties agreed that the

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

guidelines had been mis-scored, the Trial Court refused to calculate the new guidelines range nor resentence Mr. Armogeda. The Trial Court also did not justify the reasonableness of its sentence considering the seriousness of the offender and the offense. Despite being confronted with the ruling in *Francisco* that required resentencing, the Trial Court did not assert why such was not applicable, but merely asserted that it would have sentenced to the same exact sentence (despite the previous sentence being the exact mathematical center of the wrong guidelines range) by saying the victim could have died. The Trial Court did not consider anything regarding Mr. Armogeda at all in justifying the same sentence.

The Court of Appeals remanded the case for proper calculation of the guidelines but declined to order Mr. Armogeda to be resentenced. Referencing *People v Latham*, 334 Mich App 501, 965 NW2d 248 (2020), the Court of Appeals held that despite the Trial Court not knowing what the proper guidelines were, because the Trial Court had "knew that a corrected guidelines range would have recommended a lesser minimum sentence, and asserted that, regardless, it was going to exercise its discretion to stay with the original sentence." Appendix K at 8. While the Court of Appeals stated that a departure sentence no longer needs substantial and compelling reasons and acknowledged instead that the sentence must be reasonable, the Court of Appeals found neither that the Trial Court had engaged in such an analysis nor that such analysis was appropriate. On remand, the parties and the Trial Court stipulated that the proper guidelines for AWIM are 171-285 months making the 360 month sentence a sentence exceeding the guidelines by over 5 years. Appendix J.

According to *People v Francisco*, 474 Mich 82, 711 NW2d 44 (2006), if a minimum sentence falls within the appropriate guidelines range, a defendant is not entitled to be resentenced unless there has been a scoring error or inaccurate information has been relied upon. *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006) (citing MCL 769.34(10)). A

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

sentence is invalid if it is based on inaccurate information. *People v Francisco*, 474 Mich 82, 89; 711 NW2d 44 (2006) When the appropriate guideline range changes upon proper calculation of the guidelines, the defendant is entitled to resentencing – even if the original sentence was within the new guidelines range. *People v Francisco*, 474 Mich 82, 91-92; 711 NW2d 44 (2006).

Here, pursuant to *People v Francisco*, since the parties agreed that the applicable sentencing guidelines changed from what they were when Mr. Armogeda was sentenced (although the parties disagreed upon what the applicable guideline range was), the Trial Court should have ordered resentencing. Instead, the Trial Court stated that because the guidelines were merely advisory and the Trial Court would have ordered the same sentence (despite previously sentencing on AWIM to the exact mathematical middle of the guidelines reflecting the comparative seriousness of the offense and the offender compared to others who commit this crime with the respective criminal history), it did not have to order resentencing and denied the Motion to Correct an Invalid Sentence. This was an abuse of discretion because it is contrary to *Francisco*.

The Trial Court did not rely on any case law in denying resentencing - despite being confronted with *Francisco*. Cited in Mr. Armogeda's brief to the Court of Appeals, the Court ruled against Mr. Armogeda based on *People v Latham*, 334 Mich App 501, 965 NW2d 248 (2020). In *Latham*, the defendant filed a timely Motion to Correct Invalid Sentence and the Trial Court held that the guideline range was in fact different, but that the Court would have sentenced the defendant to the same sentence as it originally did so it declined to resentence him. *People v Latham*, 334 Mich App 501, 504; 965 NW2d 248 (2020). Relying on *People v Mutchie*, 468 Mich 50, 51; 658 NW2d 154 (2003), the Court of Appeals in *Latham* did not order resentencing because "the trial court has clearly indicated that it would have imposed the same sentence regardless of the scoring error and the sentence falls within the appropriate guidelines

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

range." *People v Latham*, 334 Mich App 501, 506; 965 NW2d 248 (2020) (emphasis added). *Latham* is not applicable here.

Unlike *Latham*, the Trial Court did not resolve the factual issue of what the proper guidelines were and simply declined to resentence because the Trial Court stated that 360 months is the lowest minimum sentence that the Court felt was appropriate. Because the Trial Court refused to determine the applicable guidelines range, it was unknown at the time if the original sentence of 360 months would have been in the appropriate range and *Latham* is not applicable. Furthermore, based on the agreement of the parties and the Court after remand, we now know that the sentence of 360 months was 5 years exceeding the maximum minimum sentence under the applicable guidelines range. The Court of Appeals did not state any justification for extending *Latham*, already an exception to the general rule of this Court's rule in *Francisco*, to this case where: (1) the minimum guidelines were known to be wrong by the Trial Court, but the exact guidelines (a highly relevant consideration) were not known or considered by the Trial Court; (2) the Trial Court's sentence was a sentence exceeding the maximum minimum within-guidelines sentence; and (3) the Trial Court did not engage in a proper proportionality analysis required under *Steanhouse* to justify appellate review.

In the Trial Court's justification of its 360-month sentence regardless of the sentencing guidelines, the Trial Court focused only on that the victim could have died. When a Trial Court imposes a sentence above the applicable guidelines range, the sentence is subject to review for reasonableness. *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). A sentence is reasonable if it is proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Odom*, 327 Mich App 297, 315; 933 NW2d 719 (2019). "Because the guidelines embody the principle of proportionality and trial courts must consult them when sentencing," the guidelines "serve as a 'useful tool' or 'guideposts' for effectively

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

combating sentencing disparity." *People v Dixon-Bey*, 321 Mich App 490, 524-525; 909 NW2d 458 (2017). Trial Courts must "continue to consult the applicable guidelines range and take it into account when imposing a sentence" and "must justify the sentence imposed in order to facilitate appellate review." *People v Lockridge*, 498 Mich 358, 391-392; 870 NW2d 502 (2015). "This includes an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been." *People v Smith*, 482 Mich 292, 311; 754 NW2d 284 (2008).

Unlike *Latham*, the Trial Court did not engage in a proportionality analysis - instead stating that it was "nothing scientific" and that the victim could have died if not for "the confluence of a lot of fortuitous circumstances." 08-14-23 T. at 33:9-15. This is not an explanation of why the original sentence of 30 years, the mathematical center of the prior guidelines, was more proportional to the offense **and** Mr. Armogeda than a sentence of 19 years, the mathematical center of the proper guidelines - or some other sentence.

Relief Requested

Mr. Armogeda requests that this Court order that he be resentenced pursuant to *People v Francisco* because the parties agreed that the Trial Court relied upon inaccurate information (in the form of the wrongful sentencing guidelines) when it sentenced him the first time. The Trial Court abused its discretion in not ordering resentencing when the parties agreed that the guidelines calculated were incorrect. The Court of Appeals also erred, requiring that this Precedent-Setting Court to step in, by expanding (in an unpublished decision) its own decision in *Latham* to cases where the guidelines are not known to the trial court, where the original sentence is outside the correct guidelines, and where the Trial Court did not engage in a proper proportionality analysis. This Court should vacate Section V of the Court of Appeals opinion and order resentencing if this Court does not believe that the other issues merit consideration.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

II. **The Trial Court abused its discretion by refusing to allow witnesses to testify to Mr. Armogeda's relationship with his father, holding such was irrelevant, despite the jury having to determine whether Mr. Armogeda specifically was adequately provoked by being told he was not going to be able to be a father to his unborn child.**

Issue Preservation

At trial, Defense Counsel attempted to introduce that Mr. Armogeda's father had been absent from his life since birth for the purpose of explaining why Mr. Armogeda was in "such a charged state" in response to the things that Mr. Wickizer and Ms. O'Connor were saying and doing. 12-12-2022 T. at 14:23-16:13. Defense Counsel also attempted to introduce evidence that Mr. Armogeda was hoping to do better with this child than his father had done and provide a better life than he had when being raised. 12-12-2022 T. at 23:1-15. The Trial Court refused to allow this evidence in. Finally, Defense Counsel finally attempted to ask how Mr. Armogeda's lack of a father in his life affected him, but the Trial Court made it clear in its ruling on the simple question of "whether" that affected him would be admitted without getting to ask about "how" this affected him and his outlook on being a father – consistent with the Trial Court's prior rulings. 12-12-2022 T. at 43:7-44:18. The Court of Appeals considered and rejected this argument. This issue is preserved.

Standard of Review

A trial court's decision to admit evidence will not be disturbed absent an abuse of discretion. *People v Denson*, 500 Mich 385, 396; 902 NW2d 306 (2017). However, whether a rule or statute precludes admission of evidence is a preliminary question of law that this Court reviews de novo. *People v Denson*, 500 Mich 385, 396; 902 NW2d 306 (2017). With a preserved constitutional error, the beneficiary of the error must establish that such is harmless beyond a reasonable doubt to the court to avoid relief to the affected party. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Defendant-Appellant's Argument

The Trial Court committed constitutional error depriving Mr. Armogeda of his right to present a defense when it excluded relevant and admissible testimony regarding Mr. Armogeda's relationship with his father from his trial to explain why he reacted the way he did from believing he was not going to be able to parent his own son. Since Defense Counsel attempted to elicit that testimony and the Trial Court refused on multiple occasions to permit such, such is preserved constitutional error, and the Plaintiff has the burden to prove that such exclusion was harmless beyond a reasonable doubt. The Plaintiff cannot do so.

The Court of Appeals denied appeal on this issue because it held that:

> Boss's testimony that defendant did not have a good relationship with his father, and was excited for the opportunity to be active with a child because there was no link between the excluded testimony from Boss and any acute emotional state that might have compelled defendant to attack Wickizer. Boss's testimony about defendant's aspirations as a result of childhood deprivation did not provide information about defendant's emotional state at the time of his attack.

Appendix K at 6. This contradicts the witness testimony that Mr. Armogeda was falling apart from the inside out because he was not going to get to be a parent to his child with Ms. O'Connor because of his own lack of a father in his life. This statement by the Court of Appeals concluding that the evidence is not relevant is contradicted by the Court of Appeals alternative conclusion stating that the evidence was "redundant" of a lesser version of the evidence which was introduced. Appendix K at 6. The proper test for the Court of Appeals to have implemented here is that the evidence is harmless beyond a reasonable doubt, but the Court of Appeals does not posit that such is the true and the Court of Appeals did not apply the proper standard.

The evidence here was relevant as acknowledged by the parties during the trial. The Sixth Amendment right to confrontation requires that a defendant be permitted to introduce

NICHOLS LAW FIRM

ATTORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

relevant and admissible evidence. *People v Hackett*, 421 Mich 338, 354; 365 NW2d 120 (1984). Relevant evidence means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. In this case, despite having objected based on relevancy (and having the Trial Court sustain such objections), the Plaintiff in rebuttal closing argument acknowledged that Mr. Armogeda's mental health conditions and relationship with his father were relevant. In rebuttal closing argument, Plaintiff stated:

> It's important to know that most of the instructions you receive – all of the instructions you receive are what you are to consider in determining whether or not each element has been met on each crime. That includes if there are any defenses.
>
> What you will not find in those instructions is just the fact that this defendant may have had a rough childhood is a defense for Assault with Intent to Commit Murder. You will not find is just the fact that this defendant may have been suffering from anxiety or depression at the time is not a defense for Assault with Intent to Commit Murder.
>
> Why did those facts come out then? Because they do lend to the mitigating circumstances instruction. Absolutely you can consider whether or not the defendant was under some sort of emotional stress. But that's not the only thing to consider and that's not the baseline. If you read that instruction it absolutely says that an ordinary person might have acted on impulse without thinking twice from passion instead of judgment and that this emotional excitement must have been caused by something that would cause an ordinary person to act rashly or on impulse.
>
> So yes, you can consider the experiences that Mr. Armogeda had, the thoughts and feelings he had, and the testimony he provided. But you consider it in content with that the instructions are.

12-13-2022 T. at 82:18-83:18. Here, Plaintiff acknowledges that the excluded evidence was relevant to the defense - what Mr. Armogeda's mindset was at the time of the assault.

Even if this Court does not find that Plaintiff admitted relevance of this evidence, the evidence is still relevant and admissible under the law of the State of Michigan. "Pursuant to MRE 401, evidence is relevant if two components are present, materiality and probative value.

NICHOLS LAW FIRM

ATTORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Materiality

Materiality is the requirement that the proffered evidence to be related to 'any fact that is of consequence' to the action." *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). The evidence sought to be introduced was material. The jury was instructed with regards to the Mitigating Circumstances (of provocation) in Michigan Criminal Jury Instruction 17.4 which states the following:

M Crim JI 17.4 Mitigating Circumstances

(1)The defendant can only be guilty of the crime of assault with intent to commit murder if he would have been guilty of murder had the person he assaulted actually died. If the assault took place under circumstances that would have reduced the charge to manslaughter if the person had died, the defendant is not guilty of assault with intent to commit murder.

(2)Voluntary manslaughter is different from murder in that for manslaughter, the following things must be true:

(3)First, when the defendant acted, his thinking must have been disturbed by emotional excitement to the point that an ordinary person might have acted on impulse, without thinking twice, from passion instead of judgment. This emotional excitement must have been caused by something that would cause an ordinary person to act rashly or on impulse. The law does not say what things are enough to do this. That is for you to decide. If the defendant is mentally or emotionally impaired in some way, you may consider that.

(4)Second, the killing itself must have resulted from this emotional excitement. The defendant must have acted before a reasonable time had passed to calm down and before reason took over again. The law does not say how much time is needed. That is for you to decide. The test is whether a reasonable time passed under the circumstances of this case.

(5)If you find that the crime would have been manslaughter had the person died, then you must find the defendant not guilty of assault with intent to murder.

In this case, the crimes were committed on video. The video was played for the jury multiple times. The entire question for the jury to decide in this case was only whether Mr. Armogeda had an intent to murder or whether his intent was lesser or mitigated by provocation. This should have been clear to the Trial Court and the jury throughout the trial

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

- from opening statements through closing arguments – all of which extensively focused on Mr. Armogeda's state of mind.

The prosecution asserted that Mr. Armogeda's mental state was jealousy that led to an intent to kill. The defense asserted that Mr. Armogeda's mental state and the provocation by Ms. O'Connor and Mr. Wickizer led him to have less than an intent to kill or that he was adequately provoked. The testimony from Ms. O'Connor was that Mr. Armogeda was not close to his father and that he wanted to be a father to this child with her. Mr. Wickizer testified that Mr. Armogeda clearly believed that Mr. Wickizer, and not himself, was going to parent this child with Ms. O'Connor. The reasons why this was so upsetting to Mr. Armogeda are relevant to why his thinking was based on his history with his own absent father. The determination of what is reasonable provocation is a question of fact for the fact finder. *People v Pennington*, 323 Mich App 452, 465; 917 NW2d 720 (2018) (citing *People v Pouncey*, 437 Mich 382, 390; 471 NW2d 346 (1991)). The Trial Court should have let the jury consider this.

Furthermore, this test is not a fictitious "reasonable person" test where the jury is asked to judge how a reasonable person in Mr. Armogeda's situation must feel. The jury is required to try to figure out how the **defendant**/Mr. Armogeda felt at the time based on his own experiences and the situation. The provocation must have been enough to cause an ordinary person to act rashly or on impulse, but it's based on the defendant's circumstances, experiences, and knowledge. A hypothetical situation can help to illustrate the difference.

If, for instance, the victim of a homicide had credibly threatened to severely harm or sexually assault the defendant's daughter who was not present. A killing in response to such may not be defense of others because the daughter is not in imminent harm, but it may classify as adequate provocation to "cause an ordinary person to act rashly or on impulse." A lot would depend upon whether the threat was credible, but there is a much bigger question that applies

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

to the defendant – do they have a daughter? If a childless person is threatened with harm to a daughter they do not have, it is expected that they are to have a very different reaction than an individual who has a daughter – especially one known to the victim. You cannot separate the knowledge or experiences of the individual away from them in determining if there is adequate provocation with regards to differentiating between murder and manslaughter.

This is supported by the language of the jury instruction itself in telling the jury that they can consider if the **defendant** is mentally or emotionally impaired in some way. Unlike many "reasonable person" jury instructions (e.g. 20.38a, 20.38b, 17.24a, 18.3, etc.), this jury instruction explicitly instructs the jury to consider the defendant as a person – not just how a hypothetical reasonable person would have acted. This instruction is similar to Jury Instruction 7.17 which instructs the jury to consider how the defendant felt (even if they were wrong). The fact that Mr. Armogeda had an absent father and that he continued to be affected by that was material for the jury to know as instructed. The evidence also had probative value.

Probative Value

The probative value force threshold is minimal – "'any tendency' is sufficient probative force." *People v Crawford*, 458 Mich 376, 390; 582 NW2d 785 (1998). Here, Mr. Armogeda was understandably more likely to react with strong emotions to believing he was not going to be able to parent his son with Ms. O'Connor than an individual who did not have his background. This probative value was admitted by the Plaintiff in rebuttal closing argument and finds its value based on the language of the mitigating circumstances instruction.

Otherwise Admissible

Relevancy is among the lowest evidentiary legal burdens to meet under Michigan law. All relevant evidence is generally admissible unless excluded by the Constitution of the United States, the Constitution of the State of Michigan, the Rules of Evidence, or other rules adopted

NICHOLS LAW FIRM
ATORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

by the Supreme Court. MRE 402. In objecting to the evidence, the Plaintiff did not allege that it was otherwise not admissible other than relevance. If the evidence had otherwise been inadmissible, such would have presumably raised by the Plaintiff in objecting to the evidence.

Constitutional Evidence

The purported reason to introduce the relevant and admissible evidence was to present Mr. Armogeda's defense in this case which is Constitutional in nature. "Under the state and federal Constitutions, a criminal defendant has a right to present a defense." *People v Leffew*, 508 Mich 625, 643; 975 NW2d 896 (2022) (citing Mich Const. art 1, Section 13; US Const, Am VI and US Const, Am XIV). **"**State and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. This latitude, however, has limits. Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Holmes v South Carolina*, 547 US 319, 324; 126 S Ct 1727; 164 L Ed 2d 503 (2006) (internal citations omitted). **"**The right to offer the testimony of witnesses […] is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." *Washington v Texas*, 388 US 14, 19; 87 S Ct 1920; 18 L Ed 1019 (1967). Here, Mr. Armogeda, by and through his counsel, sought to introduce evidence regarding Mr. Armogeda's father's role in his life and how that affected Mr. Armogeda's view of being a parent and being told he was not going to be able to father his child. This is Mr. Armogeda's version of the facts that he was deprived of presenting to the jury fully when the Trial Court excluded the relevant and admissible evidence.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

The right to present relevant testimony is not without limitation, but may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process. *Rock v Arkansas*, 483 US 44, 55; 107 S Ct 2704; 97 L Ed 37 (1987). "Our cases establish, at a minimum, that criminal defendants have the right to put before a jury evidence that might influence the determination of guilt." *People v Stanaway*, 446 Mich 643, 665; 521 NW2d 557 (1994) (citing *Pennsylvania v Ritchie*, 480 US 39, 56; 107 S Ct 989; 94 L Ed 40 (1987)). "If the omitted evidence creates such a reasonable doubt that did not otherwise exist, constitutional error has been committed." *US v Agurs*, 427 US 97, 112-113; 96 S Ct 2392; 49 L Ed 2d 342 (1976). Here, the entirety of the defense rest in Mr. Armogeda's intent – either to commit some harm less than murder or related to his mental state and the issue of provocation. This was deeply rooted in his constitutional right to present a defense and his right of confrontation. Since the Trial Court wrongfully excluded admissible relevant evidence and such was preserved constitutional error, the Plaintiff has the burden to show beyond a reasonable doubt that the error was harmless.

The Error Was Not Harmless Beyond a Reasonable Doubt

Here, the Court of Appeals argued that the evidence not admitted because it was not relevant was redundant of relevant evidence – despite pointing out that the evidence that was introduced that is supposedly duplicative was objected to as to relevancy and the Trial Court overruled such. The evidence that would have been introduced – as evidenced by both what Ms. Boss testified to and the evidence in the record in the presentence interview report – was not introduced in full. There is a big difference between one person asserting that someone had a bad relationship with their father (which was admitted) and the deprivation and emotional abuse that someone was subjected to. The Court of Appeals did not state that the evidence met the appropriate test of being proven harmless beyond a reasonable doubt.

NICHOLS LAW FIRM

ATTORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Furthermore, the jury was out for three hours on a case which essentially had two issues related to mens rea because all the actus rea were captured on video – Mr. Armogeda's intent and whether he was adequately provoked. While three hours is not the longest period of deliberations, it is also not a negligible amount of time. The jury was debating something – and it's likely the issue affected by the exclusion of this evidence – Mr. Armogeda's mindset. The jury may have accepted Mr. Armogeda's explanation of how he felt at the time knowing his full background or they could have disregarded this evidence that was wrongfully excluded based on the cross-examination of the Plaintiff, but the Plaintiff cannot prove such beyond a reasonable doubt - which is the burden of proof on the Plaintiff under the harmless error test. Therefore, under the law, Mr. Armogeda is entitled to a new trial where he can fully present his defense to the jury to fairly determine his guilt or innocence.

Relief Requested

For the reasons stated above, Mr. Armogeda's constitutional right to present a defense was negatively impacted by the Trial Court's exclusion of admissible relevant evidence directly on point to the issue in this case – Mr. Armogeda's mindset at the time he stabbed the victim. This is preserved constitutional error and because the Plaintiff will not be able to establish that the error was harmless beyond a reasonable doubt, Mr. Armogeda is entitled to a new trial and requests that this Court order such.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

III. Ingham County's creation of a new judicial seat, using the process of a temporary assignment, due to a desire to catch up on trials delayed by the COVID-19 pandemic was unconstitutional and was structural error that invalidates Mr. Armogeda's trial.

Issue Preservation

Prior to trial, Defense Counsel did not object to the Visiting Judge sitting as a circuit court judge. Post-conviction, a Motion for New Trial was filed alleging structural constitutional error but was denied by the Visiting Judge. Appendix G, Appendix C. The Court of Appeals also denied relief on this issue.

Standard of Review

A trial court's decision regarding a motion for a new trial is reviewed for an abuse of discretion. *People v Kevorkian*, 248 Mich App 373, 411; 639 NW2d 291 (2001). When a Court makes an error of law, it necessarily abuses its discretion. *People v Waterstone*, 296 Mich App 121, 132; 818 NW2d 432 (2012).

Defendant-Appellant's Argument

The Court of Appeals states that Mr. Armogeda "argues that because there was no vacancy or new judicial seated in the Ingham County Circuit Court, assigning a judge to that court was a constitutional violation" and that *People v Sardy*, 216 Mich App 111, 549 NW2d 23 (1996) rejected this argument. This is a misstatement of Mr. Armogeda's argument regarding this issue and *Sardy* is inapplicable. In his Brief, Mr. Armogeda acknowledged that there are multiple scenarios in which visiting judges may be used beyond filling a vacancy – to fill in for a lawfully elected or appointed judge while they are out on leave, when they are disqualified from a given case or to hear a motion to disqualify, or to assist with a docket for an individual judge. Appellant's Brief to the Court of Appeals at 43-44. Mr. Armogeda asserts that what is occurring in Ingham County is not covering for an existing judge, but rather the artificial

NICHOLS LAW FIRM
ATTORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

creation of an additional docket to which cases are reassigned from constitutionally elected or appointed judges and filling that new docket with a judge based on an "assignment." The Court of Appeals also asserted that "Defendant further argues that the assignment of a visiting judge for years violates the requirement that such assignments be for 'limited periods," and that *People v Fleming*, 185 Mich App 270, 460 NW2d 602 (1990) contradicts such. This was also not an argument raised by Mr. Armogeda in his filings.

The sole argument articulated in Mr. Armogeda's briefing was that the use of the assignment of judges that functioned equivalent to the creation of a new judicial docket (rather than providing coverage to a constitutionally elected or appointed judge) violated the separation of powers in both the selection process of that judge and in that it bypassed other requirements of appointed or elected judges – such as the age limitation and checks and balances in place for elected or appointed judges. On this argument, the Court of Appeals stated that this Court has a general superintending control over all inferior courts and tribunals so this Court could not have contradicted the Constitution in allowing the assignment of a visiting judge to a newly created docket. This conclusion was not based on existing precedent of this Court and, for the reasons stated below, this Court should rule that the assignment process is not limitless but confined by the separation of powers doctrine and violated here.

Constitutional structural errors warrant automatic reversal. *People v Duncan*, 462 Mich 47, 51; 610 NW2d 551 (2000). The question for this Court is whether the procedure by which Ingham County, and many other counties, have attempted to catch up on the backlog of trials caused by the COVID-19 pandemic is constitutional structural error. Undersigned Counsel acknowledges that these counties seek admirably to provide justice in a timely manner, but the Michigan Constitution and the separation of powers cannot be sacrificed without affecting an accused's right to a proper trial under the law.

NICHOLS LAW FIRM

ATTORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Constitutional error:

> must be classified as either structural or nonstructural. If the error is structural, reversal is automatic. If the constitutional error is not structural, it is subject to the harmless beyond a reasonable doubt test. The United States Supreme Court recently explained that most constitutional errors can be harmless, but that a limited class of constitutional errors are structural and subject to automatic reversal. Structural errors […] are intrinsically harmful, without regard to their effect on the outcome, so as to require automatic reversal. Such an error necessarily renders unfair or unreliable the determining of guilt or innocence. Structural errors deprive defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence.

People v Duncan, 462 Mich 47, 51; 610 NW2d 551 (2000) (citations omitted). Error is structural, and thus subject to automatic reversal, only in a very limited class of cases. *People v Duncan*, 462 Mich 47, 52; 610 NW2d 551 (2000). Constitutional errors affecting framework within which trial proceeds, rather than simply an error in trial process itself, infect the entire trial process and necessarily render trial fundamentally unfair, so as to preclude harmless-error review. *Neder v US*, 527 US 1, 8; 119 S Ct 1827; 144 L Ed 2d 35 (1999). While not all questions of judicial qualification are constitutional errors, issues of judicial qualification involving constitutional validity require a new trial. *Tumey v Ohio*, 273 US 510, 523; 47 S Ct 437; 71 L Ed 749 (1927). This is regardless of alleged apparent guilt, the evidence against the accused, or the punishment received. *Tumey v Ohio*, 273 US 510, 535; 47 S Ct 437; 71 L Ed 749 (1927).

Here, if the Visiting Judge was not lawfully sitting as a Circuit Court Judge presiding over Mr. Armogeda's trial, it would infect the entire trial process itself and necessarily render his trial fundamentally unfair. Judges have vast discretion in exercising judicial powers during trial and it is impossible to simply excise issues over which the judge excised discretion from the trial without affecting the whole of the trial itself. If the Visiting Judge was unconstitutionally sitting as a Circuit Court Judge, it would be constitutional structural error. The question then becomes whether the Visiting Judge was unconstitutionally sitting.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Section 23 of Article VI of the Michigan Constitution of 1963 states:

> A vacancy shall occur in the office of judge of any court of record or in the district court by death, removal, resignation or vacating of the office, and such vacancy shall be filled by appointment by the governor. The person appointed by the governor shall hold office until 12 noon of the first day of January next succeeding the first general election held after the vacancy occurs, at which election a successor shall be elected for the remainder of the unexpired term. **Whenever a new office of judge in a court of record, or the district court, is created by law, it shall be filled by election as provided by law. The supreme court may authorize persons who have been elected and served as judges to perform judicial duties for limited periods or specific assignments.**

(emphasis added) Const. 1963, article 3, §23. Mr. Armogeda acknowledges that the visiting judge was assigned to preside over Mr. Armogeda's trial pursuant to Section 23 of Article VI of the Constitution. Mr. Armogeda alleges, however, that such assignment was improper and beyond the proper constitutional scope of assignments pursuant to Section 23 of Article VI of the Michigan Constitution.

Unlike the use of visiting judges to cover temporarily for elected judges that were not available due to disqualification, disability, etc., the visiting judge in this case was assigned to preside over trials in a newly created judicial position by the judicial branch in Ingham County. While it is understandable that the courts of this state would want to address the backlog of criminal trials quickly and responsibly created by the (hopefully) worst of the COVID-19 pandemic, it is not consistent with the separation of powers for the Judiciary (especially at the local level) to **create and fill** new judicial positions to temporarily handle the backlog of criminal cases completely subverting the roles of the other branches of government.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

Separation of Powers

"The separation of powers doctrine is explicitly established in Michigan's Constitution, Const. 1963, art. 3, §2, which provides, 'The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall

RECEIVED by MSC 11/5/2024 6:46:08 PM

exercise powers properly belonging to another branch except as expressly provided in this constitution. The three branches of our government are separate and coequal, a design that preserves the independence of the three branches of government.'" *Makowski v Governor*, 299 Mich App 166, 173; 829 NW2d 291 (2012) (overruled on other grounds by *Makowski v Governor*, 495 Mich 465, 852 NW2d 61 (2014)). The Michigan Supreme Court also stated:

> While the Constitution provides for three separate branches of government, the boundaries between these branches need not be airtight. In fact, in designing the structure of our Government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence. The true meaning of the separation-of-powers doctrine is that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments; and that such exercise of the whole would subvert the principles of a free Constitution.

Makowski v Governor, 495 Mich 465, 482; 852 NW2d 61 (2014) (internal quotations and citations omitted).

By creating **and filling** the newly created position in the sole discretion of the judiciary, Ingham County violated the separation of powers doctrine because the filling of a new position is left exclusively to the election by the citizens of the county or the temporary appointment to a vacated judicial seat by executive appointment. The use of the "assignment" process to create new judicial dockets creates a troubling lack of accountability for the newly created judicial position. If this new position was held to be a vacancy, it would be subject to appointment by the Governor as outlined in the Constitution. If this new position were created by the legislature, it would be filled by an election of the voters of Ingham County. The voters of Ingham County had no role in selection of the visiting judges who serve in a similar serious role as the elected judges in Ingham County. The separation of powers doctrine was further violated because the Constitution and Michigan law places other limitations on the eligibility of judges and how they may be held accountable through checks and balances.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Visiting Judges Over the Age of 70

Section 19(3) of Article VI of the Michigan Constitution of 1963 states, "No person shall be elected or appointed to a judicial office after reaching the age of 70 years." Const. 1963, art. 6, §19. The constitutional limitation of Section 19(3) regarding age has been upheld. *Hackett v Kress*, 1 Mich App 6, 133 NW2d 221 (1965). The Michigan Court of Appeals has held that the age limitation of Section 19(3) does not apply to visiting judges due to the language used for "assignment" versus "appointment." *People v Booker*, 208 Mich App 163, 178-179; 527 NW2d 42 (1994), *People v Sardy*, 216 Mich App 111, 117; 549 NW2d 23 (1996).

By creating a new position with similar powers to other Circuit Court Judges, Ingham County has bypassed the constitutional requirement that an individual be under the age of 70 to be elected or appointed. While this may be permissible on a temporary assignment to cover for a judge who temporarily must not preside due to vacation or other temporary impediment, ongoing service on a year-by-year basis as the visiting judge ages far past the constitutional limit of 70 undercuts the limitation when the visiting judge is dealing with equal jurisdiction as constitutionally elected or appointed judges. This is especially the case in Ingham County when a judge retired from honorable service as a seated Circuit Court Judge due to the age restriction and immediately became the visiting judge – and continues to preside to date.

Wrongful Abrogation of the Checks and Balances Applicable to Judges

Individuals accused of crimes in the State of Michigan are entitled to unbiased judges acting independently under the checks and balances of power established in the Michigan Constitution and under Michigan law by the Executive, Legislature, and the voters of the State of Michigan. Visiting judges have typically temporarily operated to fill in for a lawfully elected or appointed judge while they are out on leave, are disqualified from a given case or to hear a

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

motion to disqualify, when there is a vacancy, or to assist with a docket for an individual judge. The visiting judge courtroom in Ingham County is not for any of these purposes.

The visiting judge has not been assigned to assist any individual judge out on leave, on a case they are disqualified, or to assist an individual judge with a docket, but as a 4-year temporary position (on a yearly basis) to help with the backlog of trials from the Circuit Court Judges in Ingham County. This is essentially the creation of a temporary new judicial seat in which serious felony matters are being tried and those who are convicted are sentenced. In Ingham County, a new courtroom was built into a nearby building to accommodate this new judgeship. A lot of the same resources are utilized by each of the visiting judges in running this new seat. By information and belief, the Michigan Supreme Court did not recommend changing the number of judges in Ingham County leading to the creation of this temporary seat, the legislature did not amend the appropriate statute, and such was not filled by election as required by the Michigan Constitution. The request for assignment was made by the Chief Judge of the Ingham County Circuit Court and granted by the Regional Court Administrator for the State Court Administrator's Office. Calling a yearly and renewed position a temporary assignment does not automatically subvert the role of the Michigan Supreme Court, the Executive Branch, the Legislature, and the will of the voters of Ingham County merely by calling it an assignment – rather than an appointment. The visiting judge position that was created by the Ingham County Circuit Court was created contrary to the law. Furthermore, while the visiting judge is allegedly accountable to the Michigan Supreme Court (*People v Sardy*, 216 Mich App 111, 116-117; 549 NW2d 23 (1996)) and presumably to the Chief Judge of the Circuit Court that selected/recommended the visiting judge(s), this is not the checks and balances system that our laws in the State of Michigan have been set up to do.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Circuit Court Judges may be impeached in the process spelled out in MCL 168.423. MCL 168.423 states, "Any person holding the office of circuit judge may be removed from office upon conviction in impeachment proceedings for the reasons and in the manner set forth in section 7 of article 11 of the state constitution, or the governor shall remove any circuit judge upon a concurrent resolution of 2/3 of the members elected to and serving in each house of the state legislature, and the cause for such removal shall be stated at length in such resolution, as provided in the constitution of this state. Such person shall be served with a written notice of the charges against him and be afforded an opportunity for a hearing thereon." In relevant part, Section 7 of Article XI of the Michigan Constitution states:

> The house of representatives shall have the sole power of impeaching civil officers for corrupt conduct in office or for crimes or misdemeanors, but a majority of the members elected thereto and serving therein shall be necessary to direct an impeachment. When an impeachment is directed, the house of representatives shall elect three of its members to prosecute the impeachment. Every impeachment shall be tried by the senate immediately after the final adjournment of the legislature. The senators shall take an oath or affirmation truly and impartially to try and determine the impeachment according to the evidence. […] No person shall be convicted without the concurrence of two-thirds of the senators elected and serving. […] No judicial officer shall exercise any of the functions of his office after an impeachment is directed until he is acquitted.

Const. 1963, art. 11, §7.

There is no indication that visiting judges are subject to this process. Instead, they appear immune to review by the Legislature tasked to specifically address allegations of misconduct by civil officers – including judges. In Ingham County, visiting judges handle serious felony matters including trial and sentencing and even oversee a Swift and Sure Sanctions Probation Program without any accountability as civil officers. Instead, they are only accountable to other members of the judicial branch for years of assignment despite handling no less severe matters. This is the judicial branch, supposed to be a co-equal branch of government, exercising the whole power of the legislature to impeach, the whole power of the

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

governor to appoint to fill out a term, and the whole power of the voters of Ingham County to select the individuals who will serve as a circuit court judge for individuals in our county accused of crime. Such is in violation of the separation of powers doctrine that is at the core of our democracy.

Relief Requested

While the Michigan Constitution allows for temporary or limited assignment for the purposes of Disqualification, Vacancy, Assistance with an existing docket, medical leave, annual leave, conferences/seminars, or convenience of location, Ingham County has essentially created a new docket (rather than arrange for coverage of an existing docket) on an ongoing basis that avoids the constitutional roles of the citizens of Ingham County, the Governor, the legislature, and constitutional provisions regarding judicial qualifications of individuals serving in the exact same serious role as constitutionally elected or appointed judges. Because the Visiting Judge presiding over Mr. Armogeda's trial was not acting constitutionally and because it is impossible to separate out the discretion of the Visiting Judge's influence on the trial including the admissibility of evidence, the sentence imposed, etc., this is structural constitutional error necessitating a new trial and Mr. Armogeda respectfully requests that this Court order such before a proper constitutionally sitting judge.

Respectfully Submitted,

THE NICHOLS LAW FIRM, PLLC

Dated: November 5, 2024

Christopher B. Wickman (P75395)
Attorney for Mr. Evan Armogeda
3452 E. Lake Lansing Road
East Lansing, MI 48823
O: (517) 432-9000
F: (517) 225-0332
E: cwickman@nicholslaw.net

NICHOLS LAW FIRM
ATTORNEYS
Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss
3452 E. Lake Lansing Road
E. Lansing, MI 48823
(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com

RECEIVED by MSC 11/5/2024 6:46:08 PM

Word Count

Pursuant to MCR 7.305(A)(1), MCR 7.212(B)(2) and (3), this Brief contains 12,773 countable words.

NICHOLS LAW FIRM

ATORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Christopher B. Wickman
Jackee A. Moss

3452 E. Lake Lansing Road
E. Lansing, MI 48823

(517) 432-9000
(800) 550-5892
(517) 225-0332 - facsimile
www.nicholslawyers.com