STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff - Appellee.

-V-

SCT:
COA: 366876
LC: 22-0698-FH

HUNTER JAMES HUDGINS

Defendant – Appellant.

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APPELLICATION FOR LEAVE TO APPEAL
ORAL ARGUMENT REQUESTED*

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JUDGMENT APPEALED FROM, JURISDICTION, AND RELIEF SOUGHT

On June 5, 2023, the trial court – Judge Paul J. Bridenstine - entered a Judgement of Sentence. Defendant timely filed a claim of appeal with this Court on July 13, 2023.

The Court of Appeals affirmed the trial court on December 19, 2024.

Jurisdiction is authorized under MCR 7.301(A)(2) to grant leave to appeal from the Court of Appeals' opinion entered on December 19, 2024 .

Defendant requests vacating his conviction of Operating Impaired Causing Death. Furthermore, Defendant requests that this Court allow an opportunity for briefing any issues passed on below - in accordance with *Singleton v. Wulff*, 428 U.S. 106, 120 (1976) - should this Court decide to raise any such issues.

QUESTIONS PRESENTED

I. QUESTION PRESENTED UNDER MCR 7.305(B)(3) and (5) REGARDING ERRONEOUS APPLICATION OF PROXIMATE CAUSATION.

WHERE every criminal offense requires causation and in particular proximate causation(PC), must the prosecution first prove that the injury to the complainant be a direct and natural cause of the defendant's actions (first step in PC analysis)? This by the prosecutor's proofs beyond a reasonable doubt. If not must defendant be acquitted of that charge with no further analysis?

1. **WHETHER** the circuit and appeals courts erred by not requiring that this first step be proven? **(Argument I)**.

   The circuit court answered "no."
   The court of appeals answered "no."
   Defendant -appellant answers "yes."
   Plaintiff-appellee answers "no."

INTRODUCTION

This appeal substantially hinges on whether defendant Hunter Hudgins proximately caused the death of Bailey Broderick at 8:20 pm on November 3, 2021. There were two experts on accident reconstruction. One for the People, Specialist Gary Latham, and another, Karla Petrosky for Mr. Hudgins. Both experts testified that the collision between Mr. Hudgins car and the complainant Ms. Broderick was unavoidable even if Mr. Hudgins exercised reasonable care and had nothing to drink. There was not enough time for any such driver to react and stop or otherwise avoid the collision. There was no proof shown that Ms. Broderick would have survived that collision *at any speed.*

The judge issued a jury instruction that confused the jury, negating the required first step for proximate cause that required the prosecutor first to prove beyond a reasonable doubt that the death of Ms. Broderick was the direct and natural result of Mr. Hudgins' operation of his vehicle. The jury instruction at issue required the prosecution to prove only that that the death was the "natural and necessary" result of Mr. Hudgins operation of his vehicle, and they failed to do even that.

FACTS AND PROCEDURAL HISTORY OF CASE

There were twenty witnesses and 60 received exhibits. The collision occurred within the City and County of Kalamazoo back on November 3, 2021, at 8:20 PM. The undisputed evidence is that:

1. The Defendant was 19 years of age on November 3, 2021, and admitted to having operated his mother's motor vehicle upon Fraternity Village Drive and struck a pedestrian, Bailey Broderick, as she was crossing the street. Bailey Broderick died as a result of those injuries sustained from this collision.

According to an expert traffic reconstructionist, Gary Latham, the Defendant was traveling between 22 and 35 miles an hour. And more likely about 33 miles an hour on the public street where the speed limit was 25 miles an hour and posted as 25 miles an hour. (TR V. II, p.54).

In addition to law enforcement, the Defendant twice stated that he believed that he was traveling between 30 and 35 miles an hour and one time to a detective – Nicholas Anderson - he estimated his speed at 35 miles an hour. (Tr. V. II, p.178).

About three hours after the collision, the Defendant possessed a blood alcohol content determined to be 0.048 per 100 milliliters of blood, according to Nicholas Anderson. ((Tr. V. II, p.171).

A lay witness, Brianna Hill, testified that she found the Defendant to have slurred speech and glossy eyes very soon after the collision. (Tr. V. I, p.219).

The police witness, Sydney Garner, noticed that the Defendant had an odor of intoxicants emitting from his person and glossy bloodshot eyes. (Tr. V. I, p.219).

Additionally, the Defendant's ultimate performance on two of three standardized field sobriety tests before her reflected sufficient clues revealing to her signs of impairment due to the consumption of alcohol. Apparently a third test revealed no such signs. She also testified to the fact that in her opinion, the Defendant, appeared to be impaired. (Tr. V. II, p.107-119).

Public safety officer, Shelby Walterhouse also testified that in her time with the Defendant that evening, she noticed the Defendant had a faint odor of intoxicants as well as bloodshot, watery eyes but with good speech, and was cooperative. (Tr. V. II, pp.145, 146, 147.)

Public safety officer Aaron Visser searched the Defendant's car and found in the truck and within a backpack multiple unopened containers of alcohol and also in the truck an empty alcoholic beverage box. Tr. V. II, p. 152.

Detective Nicholas Anderson testified that he spoke to the Defendant upon his arrest and the following exchange took place:

> He stated 30 minutes prior to the incident, he was at the Western football game. He left the football game and went to the lot well (ph) five is where the tailgate was happening. He stayed at the tailgate briefly. A friend of his was going to Fraternity Village, so he decided that he would go as well. So he went in his vehicle to Fraternity Village Drive. Went to the dead end there, spoke with that friend briefly. Stated that his intent at this point was to provide rides to people if they contacted him and needed a ride from the tailgate; at which point he got a notification that someone did want a ride. So he got back in his vehicle and proceeded northbound on Fraternity Village Drive headed towards the tailgate when the incident occurred.
>
> Q And did he describe to you in his words how the incident occurred?
>
> A He described northbound Fraternity Village Drive, there is a hill that you have to go up to get -- to get to the intersection of West Michigan there. He was proceeding up the hill, there was a vehicle parked on the right side of the roadway, so he went around that vehicle. Then there was another vehicle on the left side of the roadway facing him with the headlights facing him. So the vehicle was pointed southbound. So he went around that vehicle, continuing northbound. As he passed that vehicle, a person crossed in front of his vehicle and he struck that person.
>
> Q Now, did he tell you how fast he was driving while navigating around these two vehicles before striking the person?

A He estimated his speed to be about 35 miles per hour.

Q And then did you talk to him regarding whether he had anything to drink that night?

A Yes I did.

Q What did he tell you?

A He said that he had two Monaco drinks.

Q Did he indicate whether he had anything to eat?

A He said that he had not eaten very much that day.

Q And did he say when he had last consumed alcohol?

A I believe that it was an hour and a half prior to the incident.

Q And then did he indicate that he voluntarily was driving around later in the evening?

A Correct.

Q Now, while meeting with Mr. Hudgins, were you able to take into account his kind of physical stature and appearance?
A Yes.

Q Approximately how tall is Mr. Hudgins?

A Say maybe five foot seven, five foot six.

Q Mr. Hudgins?

A Yeah.

Q Um, if you heard from another officer that he was six foot or six one, would that surprise you?

A It wouldn't surprise me. Most of my contact with me, he was seated.

Q Okay.

Fair enough.

Q And then would you be able to estimate what his weight was?

A If I am going to estimate, I would say maybe 170, 165.

Q And if another officer were to say that he was 155 pounds, would that surprise you?

A It would not.

Q Now, did you complete a search warrant for CDR, electronic crash data for his car?

A Yes I did.

Benedict Kuslikis testified that at 11:27 pm when the blood was drawn the Blood Alcohol Content (BAC) was 0.048 percent alcohol. He testified that extrapolating back to 8:20 p.m. when the collision occurred the range of defendant's BAC was calculated to be 0.078 percent up to a 0.094 percent depending on what number was used for the rate of

metabolizing alcohol. Dr. Kusilkis did not explain how the rate range of metabolizing the alcohol was derived for Mr. Hudgins in particular and did not provide what the margin of error was for the range he used. He did testify that the 0.048 percent alcohol reading from 11:27 pm was “95% accurate”, without providing a margin of error/confidence level. (Tr. V. II, pp.184-222).

Karla Petroskey (Tr. V. III, pp 5-57) indicated the accident was *unavoidable* due to the complainant traversing *from behind* the stopped vehicle she was a passenger in and proceeding to move into the path of Mr. Hudgins with insufficient time for him, or any other driver to avoid the collision given the lighting, her clothing the proximity of the car she was walking behind to Mr. Hudgins car, human perception reaction time, breaking distance, and other relevant applicable factors. This also assumes a sober driver exercising reasonable care.

A motion for directed verdict was made by Defense counsel but was denied by the Court based primarily on the fact that the jury could find for the People given the witnesses’ testimony regarding primarily impairment. (Tr. V. II, pp.222 - 233).

The jury sent out a note to the Judge asking for clarification regarding negligence versus gross negligence. (Tr. V. IV, p7). The jury convicted on

counts I – Operating While Impaired Causing Death and III - Operating Minot With Any BAC.

ARGUMENT

I. The Prosecutor Did Not Prove Beyond A Reasonable Doubt That the Death Was A Direct And Natural Result Of Defendant's Operation Of The Vehicle.

STANDARD OF REVIEW

Unpreserved claims of constitutional error are reviewed for plain error that affected defendant's substantial rights. *People v Carines,* 460 Mich 750, 764-765; 597 NW2d 130 (1999); MCL 768.29. This Court reviews *de novo* issues of law arising from jury instructions. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

It is unclear if Defense Counsel properly objected to Court's use of negligence in the jury instruction discussing Ms. Broderick as a cause of her own death. However, even if counsel did not properly object, the instruction as given was plain error that affected defendant's substantial rights.

ANALYSIS

The error in this case is that the COA does not require the prosecution to first prove beyond a reasonable doubt that the death of the complainant was a direct and natural result of Defendant's operation of the vehicle. Both the expert for the prosecution and the defendant stated the collision between Defendants car and Complainant was unavoidable at any speed. There was no evidence presented that even if Defendant was going five miles an hour Complainant would have lived, or any other factor or manner of driving would have made a difference. The prosecution's burden of proof as manifest by the jury instruction on causation, did not comport to the law, including making the prosecution's burden substantially less than was required, thereby causing "plain error that affected defendant's substantial rights", *Carines* 460 Mich at 750, 764-765.

For the charge of MCL 257.625(4)(a) – Operating While Impaired Causing Death, our Michigan Supreme Court made it clear that in order to show proximate causation which is required for that charge, the prosecutor must *first* prove that the death was the "*direct and natural result*" of Mr. Hudgin's operation of his vehicle. *People v Schaefer*, 473 Mich 418, 436 (2005).

This must be proven by the prosecutor *before* an intervening/superseding cause or negligence by the complainant is

considered. The jury instructions given did not require that the first question must be resolved by the jury *before* the second question is resolved (negligence, gross negligence, etc.) This was error for the reasons below.

There was ample evidence that had Mr. Hudgins been travelling at the speed limit or even slower and had exercised the requisite caution he still would have struck Ms. Broderick – the complainant. Therefore, there is more than enough evidence that the prosecutor could not have met her burden, at least for one juror, to prove beyond a reasonable doubt that the complainant's death was the direct and natural result of Mr. Hudgins operation of the vehicle.

This fact was confirmed by the People's own witness, Specialist Gary Latham of the Kalamazoo police department (Trial Trans V. II, p.66):

> Q. Under the circumstances of this case and the information and data that you used to generate this expert report, was that enough for a driver to avoid the collision in this case?
>
> A I don't believe so.
>
> Q Do you believe that another, normal, ordinary, alert driver would have been able to avoid the accident in this case?
>
> A No, I don't believe any other driver at that point would have probably struck her as well.

The fact that the accident could not be avoided was also confirmed by the expert testimony of Karla Petroskey (Trial Trans V. III, pp 5-57) who

indicated the accident was unavoidable due to the complainant traversing *from behind* the stopped vehicle - that she was a passenger in – with dark clothing at night and poor lighting, and proceeded to move into the path of Mr. Hudgins with insufficient time for him, or any other driver to avoid the collision (*id* at 30):

> Q And so after Ms. Broderick stepped out behind the vehicle, how much time elapsed before there was an impact?
>
> A Yeah, so after she stepped out from behind the vehicle, we have about a second, maybe a little less than a second before the impact occurred.
>
> Q Could Mr. Hudgins have started slowing down his vehicle before he hit Ms. Broderick?
>
> A No. So, that -- that 1 to almost one second is less than his PRT[1] phase. So he doesn't have an opportunity in that second to even move his foot to the brake pedal yet.
>
> Q So assuming Mr. Hudgins did, in fact, see Ms. Broderick, as soon as she stepped out, could he have avoided the collision?
>
> A No.

Therefore, there was enough evidence that the collision and death was *not* a direct and natural result of Mr. Hudgin's operation of his vehicle.

Justice Cavenaugh in her dissenting opinion[2] provides the analysis in a similar case where a legally intoxicated driver – a Mr. Welch - passes a

[1] Perception Response Time.
[2] *People v Welch*, #163833 (Order Michigan Supreme Court June 24, 2023). Ex. 2.

vehicle driven by a Mr. Goemaere, which fishtails, resulting in a collision and serious injury to Mr. Welch's passenger.

Normally one avoids quoting a large contiguous part of an opinion, but it is necessary for this Court to understand the complete analysis because *Schaefer's* holding was that the prosecution did not have to prove that alcohol caused the improper driving, thereby overruling *People v Lardie,* 452 Mich 231 (1996).

However, *Schaefer* did not affect or change the proximate cause requirements.

TWO STEP ANALYSIS

Justice Cavanaugh provides a persuasive analysis that is applicable to the facts in this case, and provides insight as to why the jury was applying the wrong law in the instant case. The jury apparently believed that if Ms. Broderick's actions may have "caused" her own death, then the correct burden of proof for the prosecution would be that Defendant's actions were a natural or necessary result of Mr. Hudgins operation of the car. See TR. V. III p. 133:

> "In order to find that the death of Bailey Broderick was caused by the Defendant, you must find beyond a reasonable doubt that the death was a *natural or necessary* result of the Defendant's acts.
>
> For counts one and two, if you find that Bailey Broderick was negligent, you may only consider that negligence in deciding whether the Defendant's conduct was a substantial cause of the accident.
>
> Whether a victim's conduct was a substantial cause of the accident is a question of reasonable foreseeability. Ordinary negligence is considered reasonably foreseeable and it is thus not a substantial cause of the accident.

> In contrast, gross negligence on the part of the victim is considered a substantial cause because it is not reasonably foreseeable.
>
> Gross negligence means conduct indicating that the victim was aware of the risks, but indifferent to the results." [Emphasis added].

The Court confused the jury because the instruction implied that the first question the prosecution had to prove, "direct and natural" could be ignored and only an intervening/superseding cause had to be considered.

This is a critical error because if Ms. Broderick's moved into the path of Mr. Hudgin's car regardless of *her* state of mind, or other considerations of her negligence, then the death of Ms. Broderick was not the "direct" result of Mr. Hudgin's operation of his car.

Another factor that shows the jury was confused regarding proximate causation and intervening causes is that the jury sent out a note during deliberations asking for clarification regarding negligence and gross negligence but nothing regarding "direct and natural" indicating the jury did not consider the first question to resolve and that was "direct and natural". (Tr. V. IV, p7).

Justice Cavanaugh's opinion is below (See *People v Welch*, #163833 (Order Michigan Supreme Court June 24, 2023)).

"A. Direct And Natural Result.

The first step of proximate causation analysis is to ask whether a complainant's injury is "a direct and natural result of the defendant's actions." *Schaefer*, 473 Mich at 436 (quotation marks and citation omitted). And in this case at this point, the issue is whether defendant's evidence might be relevant in that regard. The trial court omitted this step entirely. The trial court first correctly noted that, under Schaefer, the prosecution need not prove that defendant's intoxication was a cause of the harm. But then the trial court went on to reason that OWICSI is a "strict liability offense," relying on *People v Pace,* 311 Mich App 1 (2015), and that "[b]ecause neither the snowy weather nor another vehicle amount to an intervening superseding cause under the facts presented in this case, the People are only required to prove that Defendant's operation of the vehicle was a cause of the injury."

Regarding *Pace*, *mens rea* is not at issue in this case, so it's unclear why the trial court found it relevant that OWICSI is a strict-liability offense. The reference to *Pace* is also inapt because *Pace* noted that for the offense at issue there—commission of a moving violation causing serious impairment of a body function, MCL 257.601d—the prosecution must prove that "there exists a causal link between the injury and the moving violation, i.e., factual and proximate causation." *Pace*, 311 Mich App at 10-11. Yet the trial court seemed to conclude that the prosecution did not need to carry this burden here because of *Schaefer*. Then the trial court went straight to the intervening-cause step, without asking whether the complainant's injury was a *direct and natural result* of the defendant's actions. This error alone *requires* remand to the trial court.

Implicit in the trial court's holding is the assumption that snowy conditions and Mr. Goemaere's swerving into defendant's lane are irrelevant as a matter of law to whether the complainant's injury was a direct and natural result of the defendant's actions. This was a flawed assumption. Cars pass each other on Michigan highways every day. The act of passing another car alone does not make the passer the proximate cause of a collision, regardless of all other facts.

The Court of Appeals majority made the same error. Unlike the trial court, the Court of Appeals majority did correctly identify the first step of the proximate-causation analysis, noting that "the prosecution must prove that the victim's injuries were a direct and natural result of defendant's operation of the vehicle." *Welch*, unpub op at 5. But the

majority skipped that inquiry and immediately went to the second step, concluding that "evidence of snowy road conditions could not establish an intervening cause that superseded defendant's conduct." *Id.* at 6. The presence or absence of an intervening cause is the *second step* of the analysis, not the answer to the first step.

The prosecution's arguments mirror this incomplete analysis. Relying on *Schaefer*, the prosecution argues that because defendant was operating a vehicle while intoxicated, he committed the only act the prosecution needs to prove. Like the lower courts, the prosecution then skips the first part of the proximate-cause analysis: whether the complainant's injury was the *direct and natural result* of the defendant's actions, and instead it only addresses whether there was a superseding cause. With regard to the "direct and natural result" question, whether there were snowy conditions and whether Mr. Goemaere swerved into defendant's lane may be legally relevant such that this evidence should be presented to the jury.

This confusion seems to stem from an overly broad reading of *Schaefer*. After *Schaefer*, the prosecution no longer needs to show that a defendant's intoxication was a proximate cause, but *Schaefer* did not remove the burden of proving causation entirely. Schaefer was clear that the prosecution must still establish beyond a reasonable doubt that "the defendant's operation of the motor vehicle caused the victim's [harm]," *Schaefer,* 473 Mich at 434, which necessarily encompasses proximate cause. Accordingly, *Schaefer* does not justify keeping this evidence from the jury. Even if evidence of snowy conditions and Mr. Goemaere's swerving are irrelevant as to whether there was an intervening cause, the trial court should first rule on whether this evidence is relevant to the question of whether the complainant's harm was the direct and natural result of the defendant's actions. It has not done so, and as a result, this Court should remand for that inquiry.

B. INTERVENING CAUSE

The second step of the proximate-cause analysis, reached *only if the prosecution establishes the first step,* is to ask whether there is an intervening cause that severs the causal chain. The question in that step is "whether the intervening cause was foreseeable based on an objective standard of reasonableness." *Schaefer*, 473 Mich at 437. And again, at this point the question is whether defendant's evidence might be relevant in that regard. Generally, ordinary negligence on the part of

> others is foreseeable, while gross negligence is not. *Id.* I agree with the Court of Appeals' dissenting judge that we lack a sufficient factual record at this point to determine whether the alleged intervening cause was the result of gross negligence or was otherwise not reasonably foreseeable.
>
> In fairness to the lower courts, defense counsel has muddied the waters by indicating at one point that he would not argue that another car swerving is unforeseeable. At other times, however, defense counsel has asserted that a car swerving might be unforeseeable. Defendant argued in his motion that the case should be dismissed because "the accident was the result of the actions of third parties and because [defendant] did not, through the operation of his vehicle, commit any act that caused the accident." Clearly, defendant is contesting the first step of proximate causation and arguing in the alternative that Mr. Goemaere was an intervening cause. The prosecution argues to the contrary, asserting that both snowy conditions and a car swerving in snowy conditions are foreseeable, and therefore these could not have been intervening causes. Given the general confusion that has permeated this case at every step and the extremely preliminary posture, the most prudent course is to consider whether the evidence in question might be relevant under the second step and therefore whether a remand is warranted for the trial court to assess the specific factual record in this case.
>
> The very general assertions that snowy conditions and cars swerving in snowy conditions are foreseeable are true, but unhelpful. Taking this argument to its logical conclusion, consider how it might play out in a hypothetical situation. Suppose a defendant drives while under the influence and comes to a complete and legal stop at a stoplight. Afterward, the defendant is rear-ended by another driver, and an injury ensues. In a general sense, it is foreseeable that a vehicle might be rear-ended at a stoplight. It happens. But this does not mean that the driver who is rear-ended is the proximate cause of the collision or that, if they were, the driver who struck the stationary defendant was not an intervening cause."

One result of this erroneous instruction by the court is that the prosecutor's burden of proving that the death was a direct result of Mr.

Hudgin's operation of the vehicle has disappeared. That deprives Mr. Hudgin's of the benefit of the prosecutor's more difficult burden of showing "direct" beyond a reasonable doubt.

Although in an earlier instruction the trial court stated the correct burden, "direct and natural". If a correct and incorrect instruction is given it is presumed that the jury followed the incorrect instruction. "Generally, juries are presumed to have followed instructions, *People v Graves,* 458 Mich 476, 486; 581 NW2d 229 (1998), however, if both a correct and an incorrect instruction are given, the Court will presume that the jury followed the incorrect charge, *People v Hess*, 214 Mich App 33, 37; 543 NW2d 332 (1995)." *People v. Buyssee*, No. 267469 (Mich. App. 7/1/2008), No. 274748. (Mich. App. Jul 01, 2008).

The prosecutor "ran" with the incorrect instruction, stating in closing argument that (TR. V. III, p. 119):

> "I just have to prove that this, that is, Hunter Hudgins' operation of the motor vehicle was a proximate cause. It was a *natural or necessary* result of his action of driving that night.
>
> So even if you find those other things, it does not preclude the fact that this also is a *natural and necessary* cause for Bailey's death."

It should be noted that Justice Cavenaugh's analysis involved a case – *Welch* - of impairment causing serious injury, but proximate causation is

required in both that case and this case. Also, *Welch* involved a motion in *limine* by the prosecutor to exclude evidence in the trial court of "inclement weather, roadway conditions, and the fishtailing of another vehicle, as causes of the collision that resulted in the victim's injuries." *Id* at 1.

None of these differences negate the applicability of Justice Cavenaugh's analysis to this case and in particular to the jury instructions. In addition to *Schaefer and Welch's* applicability and relevance to this case, the jury instruction requires that the prosecutor prove "direct and natural" beyond a reasonable doubt. Justice Cavenaugh only clarified where the intervening cause fits in, and the answer to that question is not necessary if the prosecutor does not first prove "direct and natural" beyond a reasonable doubt.

So in this case Mr. Hudgins can refute "direct and natural" by showing that the complainant moved into his vehicle hidden from behind another vehicle with no time to stop, even going below the speed limit which negates "direct", Also that the collision could not be avoided even going below the speed limit and exercising reasonable caution. This negates "natural result".

When answering the “direct and natural” question, Mr. Hudgins does not have to address whether Ms. Broderick was negligent, grossly negligent or not negligent at all. She might have moved directly into Mr. Hudgins car because she was momentarily blinded by the interior lights of the car she was in before getting out of the car. Similarly the fact that Mr. Hudgins may have been intoxicated is irrelevant if the *manner* he operated his vehicle was not a direct and natural cause when the collision occurred.

Mr. Welch was intoxicated but should have been allowed to present evidence of “inclement weather, roadway conditions, and the fishtailing of another vehicle, as causes of the collision that resulted in the victim’s injuries.” In this case the victim moving quickly into the path of Mr. Hudgins.

The concept of proximate causation is difficult for lawyers and judges to understand, let alone laypeople on a jury. That necessitated the wise guidance from Justice Cavanaugh. It is obvious the jury was confused about proximate causation. The incorrect comment by the prosecutor in her closing statement that her burden was to prove beyond a reasonable doubt that the death was a natural and necessary result of Mr. Hudgins operation of his vehicle only reinforced the confusion.

To further support the fact the at-issue instruction caused confusion was the acquittal of the second charge – that Mr. Hudgin's operation of his vehicle including going above the speed limit was not a proximate cause of Ms. Broderick's death. This suggests the jury was improperly holding Mr. Hudgins liable because of consuming alcohol.

The errors caused by the erroneous instruction caused "plain error that affected defendant's substantial rights", *Carines* 460 Mich at 750, 764-765. This included lessening the prosecutor's burden of proof as argued above.

In fact, alcohol consumption is *irrelevant* to the first question the jury must answer for proximate causation – was the death of Bailey Broderick the direct and natural result of Mr. Hudgins operation of his vehicle. It is highly unlikely if the jury understood what "direct and natural" meant that they would have found that an unavoidable collision because the complainant moved from behind a car that dropped her off into Hunter Hudgins vehicle – even exercising caution and travelling at the speed limit and even below – was direct and natural.

As set forth in issue I, the Court's instruction regarding proximate causation when the complainant's actions may have caused her death likely confused the jury especially when the Court stated the prosecutor's

burden of proof was that the death had to be the “natural and necessary” result of Mr. Hudgins operation of his vehicle.

The COA errs because they rely on the victim’s state of mind and the phrase “operating the vehicle” does not properly state “the manner in which Defendant operated the vehicle”.

To illustrate this, lets assume Ms. Broderick, the complainant was blinded by the interior light in the car when the door was opened or was blinded by the light of the traffic behind her. Moving quickly from behind the car while blinded might have been a cause of the accident, but her negligence, or gross negligence is not necessary to be analyzed if she moved quickly enough into the path of Mr. Hudgins car to make the accident not a “direct and natural” result of Mt Hudgins driving slow and “with care”, driving which both experts testified would not have prevented the accident.

So the COA errs when they add a state of mind requirement to the direct and natural first prong analysis. That confused the Jury and set the wrong burden of proof.

“In addition, death must have been a direct and natural result of operating the vehicle. “ COA Opinion p.4. The COA’s error was that it

should have stated "[A] direct and natural result of *the manner the defendant was* operating the vehicle*. Id.*

The rest of the COA Opinion on page 4, errs by including even more of the Complainant's state of mind which is irrelevant to the first prong and confusing. Only the Complainant's actions causing an unavoidable collision is relevant to cutting of "direct and natural" which is the hypothetical cause – in this hypothetical case – being blinded by the light.

In the instant case, Ms. Broderick moving so quick from behind the car she exited, that the accident could not be avoided at any speed or caution exercised by Mr. Hunter Hudgins, as the testimony indicated.

RELIEF REQUESTED

Defendant requests reversing or vacating the conviction in this case.

Furthermore, Defendant requests that this Court allow an opportunity for briefing any issues passed on below - in accordance with *Singleton v. Wulff*, 428 U.S. at 120 (1976) - should this Court decide to raise any such issues.

Date: February 13, 2025

Respectfully submitted,

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Certification of Word Count

As required by Amendments to MCR 7.212, 7.215, 7.305, 7.311 and 7.312, effective September 1, 2022, I certify that, according to my Microsoft Word Count function, the Defendant / Appellant's Brief on Appeal contains 5,170

words, excluding the parts of the document that are exempted by court rule.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 13, 2025.

Respectfully submitted,

/s/ Martin H. Leaf (P43202)_____,
Martin H. Leaf
Attorney for Defendant/Appellant