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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

CARLONDA NAISHE SWOOPE

Supreme Court No.: 166790
Court of Appeals No: 362924

Plaintiff/Appellant,

v

Wayne Circuit Court
Case No 21-011492-NF
Hon. Dana M. Hathaway

CITIZENS INSURANCE COMPANY
OF THE MIDWEST
Defendant/Appellee

_____/

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PLAINTIFF-APPELLANT'S SUPPLEMENTAL REPLY BRIEF ON APPEAL (MOAA)

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ORAL ARGUMENT REQUESTED

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REPLY ARGUMENT

Defendant Citizens Insurance Company of the Midwest ("Citizens"), like the Court of Appeals, spends a great deal of time conflating the issues in this case in order to reach its desired outcome. The Court of Appeals' opinion below rests on the assertion that Plaintiff's lack of a drivers' license at the time of the accident, **alone**, was sufficient to satisfy the second prong of the three *Ahmed* factors for evaluating MCL 500.3113(a). The three *Ahmed* factors are as follows: "the disqualification applies to any person (1) 'willingly operating or willingly using a motor vehicle or motorcycle' that (2) was unlawfully taken by someone, and (3) the person seeking benefits 'knew or should have known' that the motor vehicle was taken unlawfully." *Ahmed v Tokio Marine America Ins Co,* 337 Mich App 1, 10; 972 NW2d 860 (2021). The Court of Appeals in *Swoope* held:

"[Citizens] moved for summary disposition, in part, because plaintiff admitted she did not have a valid driver's license at the time of the accident. In support of this assertion, defendant attached plaintiff's deposition testimony in which she admitted she did not have a valid license. This information satisfied the second prong because operating a

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vehicle without a valid license is unlawful for purposes of MCL 500.3113(a)." *Swoope v Citizens Insurance Company of the Midwest*, (Docket no. 364924), slip op at *6. This holding goes against Michigan precedent, and requires this Court to overturn the conclusion reached in *Swoope* by the Court of Appeals.

Defendant Citizens and the Court of Appeals contend that §3113(a)'s disqualification from recovering PIP benefits is triggered by proof that the plaintiff was unlawfully using the vehicle at the time of the accident. These arguments must be rejected. The Court of Appeals in *Monaco v Home Owners Ins Co*, 317 Mich App 738; 896 NW2d 32 (2016), explicitly rejected this same argument, holding that the phrase "taken unlawfully" in §3113(a) "does not encompass the unlawful use or operation of a motor vehicle, just the unlawful taking of a vehicle." *Monaco*, 317 Mich App, at 741 (emphasis in original).

Defendant and the Court of Appeals' arguments here seek to conflate *taking* with *use*. The *Monaco* Court relied upon binding Supreme Court's precedent of both *Spectrum Health* and *Rambin*, which addressed the meaning of the phrase "unlawful taking" in §3113(a) – language, the Court

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noted, that was not amended by 2014 PA 489 – as the basis for its conclusion that there is a distinction between unlawfully "taking" a motor vehicle and unlawfully "using" a vehicle. *Monaco*, at 747-750.

As reiterated in *Monaco*, the Supreme Court in *Spectrum Health Hosps v Farm Bureau Mut Ins of Mich*, 492 Mich 503; 821 NW2d 117 (2012) held that the phrase "taken unlawfully" in MCL 500.3113(a) "embraces a situation in which an individual *gains possession* of a vehicle contrary to Michigan law." *Spectrum Health*, at 516-517 (emphasis added); *Monaco*, at 750. The Court in *Spectrum Health* therefore looked to statutes within the Michigan Penal Code that prohibit "takings," including two statutes that prohibit joyriding. *Id*., at 517. As recognized by the Court of Appeals in *Monaco*, under *Spectrum Health*, the purported violation of law must be related to the unlawful possession or "taking" of the vehicle, rather than the unlawful "use" or "operation" of a motor vehicle. *Monaco*, at 750, citing *Spectrum Health*, at 517. Remember, the injured driver in *Spectrum Health*, Craig Smith, Jr., was unlicensed. 492 Mich at 512. If the defendant were correct in its argument in this case, there would have been no reason for this Court in *Spectrum Health* to explore the entire question of whether

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plaintiff's taking of the vehicle was in violation of the joyriding statute, MCL 750.414. The fact that this Court in *Spectrum Health* needed to discuss the joyriding statute clearly demonstrates that the defendant's arguments associated with any claimed unlawful use of the vehicle is wrong.

Under the holdings in *Spectrum Health* and *Monaco*, there is no basis for the argument that the violation of any law renders the use of the motor vehicle an "unlawful taking" for purposes of §3113(a). The Court of Appeals and Defendant's reliance upon violations of the Michigan Penal Code and/or the Michigan Vehicle Code that have no relevance to the unlawful "taking" of a vehicle –including MCL 257.301 (driving without a license) – are irrelevant to the issue of the unlawful taking of the vehicle. Under *Spectrum Health* and *Monaco*, whether Ms. Valentine authorized Ms. Swoope to drive her vehicle despite the fact that she did not have a valid driver's license does not turn an authorized or permitted taking into an "unlawful" taking, and thus is irrelevant with respect to examining the "taken unlawfully" phrase in MCL 500.3113(a). *Monaco*, at 741, 748-749. Any argument to the contrary is inconsistent with the holdings in *Spectrum Health* and *Monaco*. Taking the evidence in the light most favorable to the

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non-moving party, Plaintiff, there remains a genuine question of material fact as to whether Plaintiff unlawfully took Ms. Valentine's vehicle to respond to her mother's medical emergency.

The decision in *Ahmed, supra*, dealt with the question of whether the person seeking PIP benefits under §3113(a) took a motor vehicle knowing that the owner has prohibited the taking, or if that person 'should have known' that the owner prohibited the taking." *Ahmed* at 25-26. The Court of Appeals held that when disqualification for PIP benefits under §3113(a) is at issue, a person acts unlawfully under MCL 750.414 if the person "takes a motor vehicle or motorcycle knowing that the owner has prohibited the taking," or if the person "takes a motor vehicle or motorcycle and 'should have known' that the owner prohibited the taking." *Id*., at 25-26. The *Ahmed* Court ultimately held that, because plaintiff testified that he was unaware of the terms of the rental agreement which prohibited him from driving the vehicle, he therefore lacked *actual knowledge* that an unlicensed driver was prohibited by the rental agreement from taking the car. *Id*., at 26. The Court of Appeals concluded, however, that under the "should have known" standard, plaintiff "was obligated to

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determine the scope of the authorization" that the owner of the vehicle had set under the rental agreement. *Id*., at 26.

The Court of Appeals in *Ahmed* held that plaintiff "should have known" the terms of the rental agreement "because a person may not simply take what he knows to be another's property without taking any steps to determine if the owner authorized the taking," and that the "mere assumption or supposition that it must be permissible to take a third party's property, without more, does not satisfy the 'should have known' standard of MCL 500.3113(a)." *Id*., at 27. The distinction between *Ahmed* and the facts here is the nature of the relationship between Ms. Valentine and Plaintiff. Plaintiff and Ms. Valentine were longstanding friends, and given the nature of the medical emergency facing Plaintiff, Plaintiff reasonably believed that her good friend would permit her to use her vehicle in this emergency. A question of fact remains for the jury to determine, and the Court of Appeals must be reversed here.

Plaintiff would be remiss in failing to address the comments made in Defendant's Brief about stopping at Burger King (Def's Brief, p. 4) en route to a medical emergency. Again, Plaintiff's mother was watching her

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children at the time of her medical emergency. Plaintiff had no idea how long she was going to be at the hospital with her mother (and her children), and had to make sure that her children had food during that time. Plaintiff's actions were consistent with responding to a medical emergency involving the person providing child care and supervision for her children.

CONCLUSION

The Court of Appeals in *Swoope* ignored the prior binding precedent of *Monaco,* and conflated "unlawful taking" and "unlawful use" into one category, "Unlawful Operation". *Swoope,* slip op at *2. This conflation has led to confusion of the issues. The question is not whether Ms. Valentine's vehicle was *used* unlawfully by Ms. Swoope, but rather whether the vehicle was *taken* unlawfully by Ms. Swoope, and given the facts and circumstances of Ms. Swoope's family medical emergency, a genuine question for the jury to determine still remains. The trial court was correct, and the Court of Appeals was incorrect and ought to be reversed.

RELIEF REQUESTED

For the foregoing reasons, the Plaintiff/Appellee, Carlonda Naishe

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Swoope, respectfully requests that this Honorable Court overturn the Court of Appeals' erroneous decision, and reinstate the holding of the trial court denying defendant's motion for summary disposition, for the reasons stated above.

Respectfully submitted,

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Dated: July 22, 2025

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CERTIFICATION PURSUANT TO MCR 7.312(A)(1) and 7.212(G)

E. Jason Blankenship, attorney for plaintiff-appellant, hereby certifies pursuant to MCR 7.312(A)(1) and 7.212(G) that this brief was typed using the OpenOffice word processing program. That program has a function which can calculate the total number of words contained in a document. According to that program function, there are **1,435** words in this brief.

Signed,

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