STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Supreme Court No 161589
Court Of Appeals No. 344603
Circuit Court No. 15-3884-FC

V

ROBERTO M.DUPREE,
Defendant-Appellant,

APPELLANTS REPLY BRIEF TO THE APPELEES ANSWER TO DEFENDANTS - APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF JURISDICTION

The Michigan Supreme Court (this Court) has jurisdiction of this Case.

Index Of Authorities

Cases:

People v Carter 462 Mich 266,215 (2000)
People v Hardy 494 Mich 430,438 (2013)
People v William 475 Mich 245,250 (2006)

Statutes:

MCL 750.227 (b)
MCL 777.31 (2)(b)
MCL 777.32 (2)(d)
MCL 777.34(2)

iii

STATEMENT OF FACTS

The Appellant wishes this Court to adopt the Statement of Facts Filed With his Application.

P.1

I THE TRIAL COURT DID PLAINLY ERR IN SCORING 15 POINTS FOR OV 1, 5 points FOR OV 2, AND 10 POINTS FOR OV 4 IN CALCULATING THE MINIMUM SENTENCE RANGE

Standard of Review:
A trial court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence. Whether the facts are adequate to satisfy the scoring conditions prescribed by statute is a question of statutory interpretation this court reviews de novo. People v Hardy 494 Mich 430,438;835 NW2d340(2013)

ARGUMENT ov1 In the Prosecutors answer for Appellant's Application For Leave to Appeal, by it's own admission Mr.Dupree did not possess a firearm as the alleged co-offenders.
The Prosecutions answer is highly misplaced in light of ov1. Because although a defendant may share in scoring offense variable 1 if one or more principle offenders were scored for possession of a weapon.

Here, Mr. Dupree points out that the plain language of MCL 777.31 (2)(b) which governs the scoring of ov1, requires that atleast one co defendant be scored for points to be attributed to him as well. It is patently clear from the evidence presented that no other offender was charged and convicted nor did Mr. Dupree ever possess a weapon. However, the prosecution in it's answer conceded to the fact that Mr. Dupree did not have a firearm and no other offender had been charged and or convicted in this offense. (see page 9 peoples answer)

The Plaintiff in it's misplaced argument of it's Answer Failed to address that no statutory requirements exist that require Mr.Dupree to be scored under ov1 when no other offenders were charged and convicted

b. OV2

As pointed out in the above stated argument the prosecution sets forth that based on MCL 777.32 (2)(d) that points should be scored " if the offender possessed or used a pistol,a rifle, Shotgun....in multiple offenders cases, if one offender is assessed points for possessing a weapon, all offenders shall be assessed the same number of points MCL 777.32

For the same reasons stated above in the argument of ov1, the prosecution conceded to the fact that no evidence was ever presented that placed a weapon in the hands of Mr. Dupree, and that it was indeed another uncharged, unconvicted offenders who may have possessed a weapon.

As pointed out in the above stated argument based on the statute, and offender in the same criminal transaction that did not possess a weapon should be scored the same points as the convicted defender(s) recieved points that did possess a weapon.

The trial court by it's own admission, in failing to sentence Mr. Dupree knew there was no legal basis to sentence him for a firearm. Because evidence showed that neither he nor any offenders were convicted that it could do so under.

The trial court's error in scoring these points in the above stated variable are patently diametrically opposed by scoring those variables. When no other offenders were charged and convicted for the culpability of utilizing a weapon to score Mr. Dupree under. And yet the court did not sentence him to the statutory required mandatory minimum seperate offense of utilizing a firearm in the commission of a felony MCL 750.227(b)

C. OV 4

The prosecution in it's own answer argues that because the complaintant testified that he "thought to much", was somewhat "shook up" and...nervous when someone walked in for fear of being robbed again" that this substantiates the scoring of ov4. However no evidence presented by Mr. Zamzami could establish that he suffered any serious Pyscological injury that may require proffessional treatment MCL 777.34(2)

Mr. Zamzami went on to testify that dispite what he had just been faced with, he, immediately continued to operate his business without any immediate fear. Therefore, the scoring of this offense variable and the prosecutions argument is mis-placed in light of the testimonial evidence provided by the complaintant.

II

THE DEFENDANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO A SPEEDY TRIAL

Standard of Review:
Whether Appellant was denied his Right to a Speedy Trial is a mixed question of Fact And Law That is reviewed de novo. People v Williams, 475 Mich 245,250(2006)

Argument

The Prosecution Argues in it's Answer That because no prejudice From the delay resulting from the loss of the Actual (D.N.A.) Material, that he did not violate Appellant's right to a Speedy Trial After invoking his right.

Mr.Dupree has established the Factual basis where he was Prejudiced by the delay following his Asserted right to a Speedy Trial. Upon request for (D.N.A.) material for testing by An Appointed Expert witness, the prosecution failed to timely provide the material Alleging it was lost and unavailable for testing.

The delay in failing to timely provide The material, prejudiced the Appellant by failing to Allow him of his Due-Process Right to Challenge The evidence That was presented against him. The Appellant has established, And now further Asserts That The Prosecution engaged in an intentional Dilatory delay tactic by failing to timely provide him with the materials for (D.N.A.) testing which caused The delay For Appellants invoked Right to a Speedy Trial. Thereby violating his 6th and 14th Amendment Due-Process Rights to a Fair Trial.
Therefore Leave to Appeal Should Be GRANTED

III. THE PROSECUTIONS ACQUIESCED TO THE FACTS ASSERTED IN ISSUE VII OF APPELLANT'S APPLICATION FOR LEAVE TO APPEAL BY IT'S FAILURE TO FOLLOW THIS COURTS ORDER TO PARTICULARLY REPLY TO AFOREMENTION ISSUE

Standard of Review:

The prosecution's failure to answer this court's order is an automatic waiver to this issue thereby precluding any response to this issue. Waiver is "the intentional relinguishment or abandonment of a known right "People v Carter, 462 Mich 206,215;612 NW2d 144(2000)

Argument:

On April 2, 2021 this court ordered the prosecution to reply to appellants application for leave to appeal. On April 29,2021 the prosecution responded to issue III & V contrary to this court's order to respond particularly to issues III & VII, although the prosecution responded to issue III & V of appellants application for leave to appeal. It failed to follow this court's order to reply to issue VII.

By the prosecution failure to answer issue VII, it acquiesced to the facts asserted by appellant. In Issue VII of appellant's application for leave to appeal he pointed out how his right to a properly instructed jury was violated, where the trial court provided improper instructions to the jury.

When an improper instruction is charged to the jury along with a proper instruction the jury is automatically presumed to have followed the improper instruction thereby creating a structional error. An improper instruction causes a substantial and injurious effect in determining the jury's verdict.

Here the Trial Courts only instructed the jury with an improper instruction. The jury was never given the opportunity to make a determination between the proper instruction which was not given and the improper instruction that was. The jury was forced to deliberate solely on an erroneous jury instruction, thereby creating a reversible error. Therefore Leave to Appeal should be granted so that this court can make a full and fair assessment of the facts presented here in.

CONCLUSION

Wherefore, for the above stated reasons as well as these mentioned in this instance, Appellant has established that the trial court erred in scoring offense variables that attributed to him being scored points that placed him in a sentencing grid that he otherwise would had been had it not been for this error, had it not been for the intentional delay by the prosecution his Constitutional Right to a speedy trial would not have been violated, that the trial court erred when it gave the improper instruction to the jury.

Most importantly, that Mr. Dupree is actually innocent of this offense, which is verified by the complaintant's own description of the perpetrator (a fat bald white man). Based in these facts alone, Leave to Appeal should be granted.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, Appellant respectfully requests that this Court GRANT the LEAVE to APPEAL, Or in the Alternative ORDER the Appellant be remanded for a new trial, or Order any other relief it deem appropriate.

Date: 5/14/21

Appellant in pro-per R. Dupree

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CERTIFICATE OF SERVICE

I Hereby certify on May, 18, 2021, the foregoing Appellant(s) Reply Brief to the Appellee(s) answer to Defendant(s)-Appellant(s) Application for Leave to Appeal were mailed, postage pre-paid, To the Macomb County Prosecutors office, One South Main Street, Mount Clemens, Michigan, 48043-2306.

R. Dupree

Roberto M. Dupree # 215179

