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IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS

People of the State of Michigan
Plaintiff-Appellee,

SC: 153828
COA: 324018
LC: 14-000152-FC

-v-

Theodore Paul Wafer
Defendant-Appellant
_____/

SUPPLEMENTAL AMICUS PLEADING TO CORRECT MISQUOTE IN ISSUE 2(B)

FOR ISSUE 2(B) PLEASE REFER TO THIS SUPPLEMENT

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ISSUE 2(B):
MCL 767.71, RECOGNIZES ALL FORMS OF MANSLAUGHTER AS BEING ENCOMPASSED BY ONE COMMON LAW DEFINITION; THIS INCLUDES THE LEGISLATIVE REFERENCE TO MANSLAUGHTER, AS FOUND IN MCL 750.329. THEREFORE, BY OPERATION OF MCL 767.71, MANSLAUGHTER, UNDER MCL 750.329, IS A FORM OF COMMON LAW MANSLAUGHTER AND A LESSER INCLUDED OFFENSE OF SECOND DEGREE MURDER

The shared identity of MCL 750.329, and common law manslaughter, has been codified. The open manslaughter statute makes all manslaughter a single offense, under a single statute:

"In all indictments for murder and manslaughter it shall not be necessary to set forth the manner in which nor the means by which the death of the deceased was caused; but it shall be sufficient in any indictment for murder to charge that the defendant did murder the deceased; and it shall be sufficient in manslaughter to charge that the defendant did kill the deceased." MCL 767.71.

The terms of this statute identify the actus reus element "In all indictments for ... manslaughter " as "the defendant did kill the deceased." Id. Although Wafer was charged under MCL 750.329, all of the manslaughter statutes must be read in pari materia. "Under the doctrine of in pari materia statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law." People v Feeley 499 Mich 429, 443 (2016)

"In all indictments for... manslaughter", including an indictment under MCL 750.329, prosecutors have a choice. They can use the specific statute, or they can freely interchange it with the general common law statute, and under either choice, will still be charging the same offense; because, under MCL 767.71, all manslaughter is rooted in the same common law ground. "There is but one offense of manslaughter in this State." People v Rogulski 181 Mich 481, 494 (1914).

While the scope of the statute spans "all indictments for ... manslaughter", it does not define manslaughter. "In construing a statute wherein a public offense has been declared in the

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general terms of the common law, without more particular definition, the courts generally refer to the common law for particular acts constituting the offense." People v Schmitt 275 Mich 575, 577 (1936).

In keeping with this principle, it has been acknowledged that MCL 767.71 "... simply codifies the common law." People v Johnson 427 Mich 98, 112 fn. 12 (1986). Through MCL 767.71, the legislature has intentionally bound "all indictments for ... manslaughter" to the common law definition-- including manslaughter under MCL 750.329.

> "[L]awmaking bodies are presumed to know of and legislate in harmony with existing laws, and the language of every enactment is... to be construed consistent with other laws which it does not in plain and unequivocal terms modify or repeal." People v Harrison 194 Mich 363, 369 (1916).

No plain and unequivocal legislative terms sunder MCL 750.329 away from the common law continuum. To the contrary, MCL 767.71 recognizes no distinction between the actus reus element of common law manslaughter, and so called 'statutory manslaughter'. MCL 750.329 embraces shooting deaths, while common law manslaughter embraces every killing of a human being, including shooting deaths. Therefore, any indictment for manslaughter, under MCL 750.329, is simply a subset of common law manslaughter under MCL 767.71. The Supreme Court has already held as much: "The statute [MCL 750.329] has nowhere attempted to define the crime of manslaughter, but has left the offense as known at the common law". People v Stubenvoll 62 Mich 329, 331 (1886).

Michigan has a unified open manslaughter statute, which declares that the actus reus element is the same in "all indictments for ... manslaughter". Additionally, the Legislature has declined to define manslaughter, leaving the definition to common law. These facts evince a clear legislative intent to rely on the common law to define "any indictment for manslaughter".

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Therefore, MCL 750.329, is just a form of common law manslaughter. The specific actus reus of MCL 750.329 is just another way of saying "that the defendant did kill the deceased." MCL 767.71.

A contrary conclusion would judicially rewrite MCL 767.71, to read "[almost] all indictments for manslaughter" instead of the text, which states "all indictments for ... manslaughter".

"Congress is clearly free to fashion exceptions to the rule it chose to enact[]. A court, just as clearly, is not." Whalen v U.S. 445 U.S. 684, 695 (1980). "In other words, because the proper role of the judiciary is to interpret and not write the law, courts simply lack authority to venture beyond the unambiguous text of a statute." Reed v Yackell 473 Mich 520, 529 (2005).

When MCL 767.71 declared an intent to include "all indictments for ... manslaughter," it unavoidably aggregated MCL 750.329 and common law manslaughter as a single offense, chargeable under a single statute. As such, the common law rule that manslaughter is a lesser included offense of second degree murder applies to MCL 750.329. See People v Mendoza 468 Mich 527, 540 (2003).