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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

CARLONDA NAISHE SWOOPE

Plaintiff-Appellant

v.
CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellee.

SC No.: 166790
COA No.: 364924
LC Case No.: 21-011402-NF

MICHIGAN DEFENSE TRIAL COUNSEL'S *AMICUS CURIAE* BRIEF

John C.W. Hohmeier (P75187)
Daniel M. Campbell (P85598)
SCARFONE & GEEN, PC
30680 Montpelier Dr.
Madison Heights, MI 48071
(248) 291-6184

Attorney for *Amicus Curiae*
Michigan Defense Trial Counsel

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Michigan Defense Trial Counsel (MDTC) is a statewide attorney association that primarily focuses on civil-defense representation. MDTC was established in 1979 to enhance and promote the civil-defense bar, and it accomplishes that goal by facilitating dialogue among and advancing the knowledge and skills of civil-defense lawyers. MDTC appears before this Court as a representative for Michigan's civil-defense lawyers and their clients, a significant portion of which could be affected by the issues involved in this case.[1]

ORDER APPEALED FROM AND JURISDICTIONAL STATEMENT

MDTC relies on the parties' Order Appealed From and Jurisdictional Statement in their Application and Response before this Court.

STATEMENT OF QUESTION PRESENTED

MDTC relies on the parties' Statement of Questions Presented before this Court.

STATEMENT OF FACTS

MDTC relies on the parties' Statement of Facts sections in their Briefs before this Court.

STANDARD OF REVIEW

MDTC also relies on the parties' Standard of Review sections in their Briefs on appeal.

[1] After reasonable investigation, MDTC believes that (a) no MDTC member who voted either in favor or against preparation of this brief, and no attorney in the law firm or corporation of such a MDTC member, represents a party to this litigation; (b) no MDTC member who is a representative of any party to this litigation participated in the authorship of this brief; and (c) no one other than MDTC, or its members who authored this brief or their law firms or employers, made direct or indirect financial contribution to the preparation or submission of this brief.

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STATEMENT OF QUESTION PRESENTED

I. SHOULD SWOOPE BE EXCLUDED FROM CLAIMING PIP BENEFITS UNDER MCL 500.3113 WHEN SHE WILLFULLY TOOK THE MOTOR VEHICLE INVOLVED IN THE ACCIDENT, DID NOT HAVE A VALID DRIVER'S LICENSE, AND SHOULD HAVE KNOWN THAT SHE DID NOT HAVE PERMISSION FROM VALENTINE TO USE THE MOTOR VEHICLE INVOLVED IN THE ACCIDENT?

The trial court initially answered:	"No"
The Court of Appeals Answered:	"Yes."
Defendant-Appellant contends the answer should be:	"Yes"
Plaintiff-Appellee contends the answer should be:	"No"
The Michigan Defense Trial Counsel contends the answer should be:	"Yes."

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LAW AND ARGUMENT

I. SWOOPE WILLFULLY TOOK THE MOTOR VEHICLE INVOLVED IN THE ACCIDENT, DID NOT HAVE A VALID DRIVER'S LICENSE, AND SHOULD HAVE KNOWN THAT SHE DID NOT HAVE PERMISSION TO USE THE MOTOR VEHICLE INVOLVED IN THE ACCIDENT; THEREFORE, SWOOPE SHOULD BE EXCLUDED FROM CLAIMING PIP BENEFITS BECAUSE SHE UNLAWFULLY TOOK VALENTINE'S MOTOR VEHICLE UNDER MCL 500.3113.

Standard of Review

The grant or denial of a motion for reconsideration is reviewed for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). A trial court abuses its discretion when the result is "so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Franchino v Franchino*, 263 Mich App 172, 193; 687 NW2d 620 (2004) (superseded on other grounds).

While the denial of a motion for reconsideration is reviewed for an abuse of discretion, appellate review of the original denial of Defendant's Motion for Summary Disposition is also appropriate. *Gavulic v Boyer*, 195 Mich App 20, 23-24; PARALLEL CITATION (1992).

The propriety of summary disposition is reviewed *de novo*. *Ensink v Mecosta County Gen Hosp*, 262 Mich App 518, 523; 687 NW2d 143 (2004). This issue also involves an interpretation of a statute, MCL 500.3113, which is also a question of law for this Court's *de novo* review. *Klooster v City of Charlevoix*, 488 Mich 289, 295; 488 Mich 289 (2011).

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Law and Argument

MCL 500.3113(a) states:

A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

The word "taken" is not defined in the No-Fault Act. *Henry Ford Health Sys v Esurance Ins Co*, 288 Mich App 593, 600; 808 NW 2d 1 (2010). The Michigan Court of Appeals read "take" *and* "use" together in context under MCL 500.3113. *Id*. Thus, "take" is defined as "to get something into one's hands or possession through a voluntary action." *Id*. "This would necessarily involve either a transfer of possession or control of an object from one person to another or gaining of possession or control of an unattended object that is not in anyone's control or possession." *Id*.

Therefore, MCL 500.3113(a) "envisions an accomplished or completed taking of a motor vehicle followed by its use during which an accident occurs giving rise to injuries." *Id*. To enact the prohibition in MCL 500.3113(a), "a person must both *take and use* a vehicle." *Id*. at 602. The Supreme Court of Michigan later expounded upon "taken unlawfully" in *Spectrum Health Hospitals v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503; 821 NW2d 117 (2012).

In *Spectrum*, the Supreme Court concluded that "a taking does not have to be larcenous to be unlawful, the phrase 'taken unlawfully' in MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner, regardless of whether that person intended to steal it." *Spectrum Health Hospitals v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503, 518; 821 NW2d 117 (2012). In ruling as it did, the Supreme Court of Michigan explicitly overruled the

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"chain of permissive use" theory previously adopted by the Michigan Court of Appeals in *Bronson Methodist Hospital v Forshee,* 198 Mich App 617, 626; 499 NW2d 423 (1993). The Supreme Court also explicitly overruled the "family joyriding exception" articulated by Justice Levin in *Priesman v Meridian Mutual Insurance Co,* 441 Mich 60, 68; 490 NW2d 314 (1992).

The Michigan Court of Appeals in *Spectrum* heard a consolidated appeal about the former permissive chain of use theory adopted by *Bronson*. *Spectrum Health Hospitals v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503; 821 NW2d 117 (2012). In *Spectrum*, the claimant took his father's vehicle, which was insured by the defendant insurer. *Id.* at 511-12. The claimant's father had forbidden him from driving the vehicle because the claimant did not have a driver's license. *Id*. at 512. The claimant also acknowledged that he could not use the vehicle, and then he was involved in a single-vehicle accident while driving his father's vehicle. *Id*. The trial court denied the defendant insurer's Motion for Summary Disposition, holding that the claimant had permissive chain of use for the vehicle involved in the accident, which avoided prohibition under MCL 500.3113(a). *Id*.

In *Spectrum*, the Supreme Court of Michigan held that the chain of permissive use theory rendered MCL 500.3113(a) inapplicable. *Id*. at 520. The Court further held that the "'chain of permissive use' theory is inconsistent with the statutory language of the no fault act." *Id*. at 521. The Court reasoned that the court in *Bronson* used the wrong statutory scheme when articulating the theory, erroneously using the owner's liability statute. *Id*. The Court further reasoned that the chain of permissive use theory was inconsistent with the plain meaning under MCL 500.3113(a) and that the only relevant determinations were whether the vehicle was taken without authority. *Id*. at 523.

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Ultimately, the Supreme Court of Michigan found no factual dispute existed that the father only gave consent to the claimant's girlfriend to use his vehicle. *Id*. at 524. The Court found that the father had instructed both the claimant and his girlfriend that the claimant could not use the vehicle, and thus, the claimant operated the vehicle without permission and without authority — the vehicle was taken unlawfully. *Id*. The Court reasoned that any permission to use the vehicle that the girlfriend allegedly gave to the claimant was irrelevant because it was "*contrary to the express prohibition of the vehicle's owner* (his father)." *Id*.

The Supreme Court of Michigan also held that "the family-joyriding exception is not supported by the text of MCL 500.3113(a)." *Id*. at 533. Under MCL 500.3113(a)'s plain language, there is nothing in the statute that created an exception to the unlawful-taking rule for family joyriding. *Id*. at 534. The Court reasoned that, "because the legality of the taking does not turn on whether the driver intended to steal the car, MCL 500.3113(a) applies equally to joyriders. *Id*. at 537. In particular, the court stated:

> Our decision today applies the plain language of MCL 500.3113(a), which excludes from receiving PIP benefits someone who 'was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle.'"

Id.

The Michigan Supreme Court explicitly overruled both the chain of permissive use theory and the family-joyriding exception. *Id*. at 538. The case at bar is just like *Spectrum*: Plaintiff Carlonda Swoope cannot claim the chain of permissive use theory or the joyriding exception to avoid the application of MCL 500.3113(a)'s plain language. Swoope's testimony clearly illustrates that she had neither express nor implied permission to take and use the vehicle.

Parallel to *Spectrum*, Swoope did not have a valid driver's license on the date of her accident. Just like in *Spectrum*, Swoope did not receive permission from the vehicle's owner —

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in fact, she did not even ask for permission. Swoope took the motor vehicle without permission; therefore, Swoope unlawfully took the vehicle under MCL 500.3113(a).

Plaintiff Carlonda Swoope never drove the vehicle involved in the accident before the accident happened. Additionally, Swoope lived with the vehicle's owner, her friend, Valentine, for the 4 years leading up to the accident. At a minimum, Swoope's testimony reveals that she should have known that she took the vehicle unlawfully when she did not have a valid driver's license and had neither express nor implied permission to drive the vehicle. Swoope took Valentine's vehicle: she did not ask for permission to drive the vehicle, and she assumed that she could do so under her ***subjective*** belief that she could do so in an emergency.[2]

Here, the Court of Appeals properly overturned the lower court's ruling. This case's only issue is one of law that must be decided by the Court, and this Court should find that Plaintiff Carlonda Swoope is excluded from personal protection insurance benefits under MCL 500.3113(a). Swoope's argument is fatal, since she does not cite any binding Michigan statutes or caselaw to justify her reliance on her subjective belief that she could drive Valentine's vehicle in an emergency. Swoope should have known that she took the vehicle unlawfully: it is common sense that a person may not take another's vehicle without affirmatively finding out whether they may use the vehicle.

Swoope relies on *Rambin v Allstate Ins Co*, 495 Mich 316; 852 NW2d 34 (2014), *Morris v Progressive Michigan Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 11, 2020 (Docket No. 350214), and *Monaco v Home Owners Ins Co*, 317 Mich App 738;

[2] Plaintiff-Swoope does not cite any binding Michigan statutes or caselaw to support her underlying premise that she could use Valentine's vehicle due to her alleged pressing circumstances. Even if Plaintiff cited legal authority for her position, her argument fails to support her alleged justification for unlawfully taking Valentine's vehicle: Plaintiff Swoope's mother had already called for an ambulance and Plaintiff Swoope stopped to get fast food on her alleged urgent trip to help her mother. *See* Defendant-Appellee's Supplemental Brief, pp 3-4.

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896 NW2d 32 (2016). *Rambin* was superseded by 2014 PA 489, where the Legislature added the "knew or should have known" language to MCL 500.3113(a). *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1, 24-26; 972 NW2d 860 (2021).

Rambin was decided before MCL 500.3113(a) was amended by 2014 PA 489, and the *Rambin* Court held: "'[c]onsidering MCL 750.414 as a whole, we conclude that it properly requires a showing of knowingly taking without authority or knowingly using without authority.'" *Rambin*, 495 Mich at 24. This was considered the "mens rea" element. *Id*. at 23-24.

In *Ahmed*, the Court of Appeals held that 2014 PA 489 changed the "mens rea" requirement that *Rambin* held applied in the context of MCL 750.414. *Ahmed*, 337 Mich App at 24-26. The Court held that "when disqualification for PIP benefits 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.

Here, *Rambin*, *Morris*, and *Monaco* do not apply — they are not factually analogous to this case. Still, Swoope incorrectly asserts that, because there is "no evidence that Ms. Swoope's use of the motor vehicle on October 27, 2020, was expressly 'unauthorized' by Ms. Valentine," this Court should reverse the Court of Appeals.[3] Whether Ms. Valentine expressly prohibited Swoope from using the vehicle is only part of the Court's analysis about whether Swoope "knew or should have known" that she could take or use the vehicle. MCL 500.3113(a). This Court's analysis does not stop at whether Swoope knew whether she could take or use the vehicle. Thus, the narrow issue in this case is whether Swoope *should have known* that she could not take

[3] Plaintiff-Appellant's Brief on Appeal, p 21.

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or use the vehicle, and whether Swoope's subjective beliefs may be considered in such an analysis under MCL 500.3113(a).

Just like in *Ahmed*, Swoope was required to determine whether she could use the motor vehicle since "a person may not simply take what [she] knows to be another's property without taking any steps to determine if the owner authorized the taking." *Ahmed*, 337 Mich App at 26-27. Additionally, Plaintiff Swoop could not "assum[e] or suppose[e] that it must be permissible to take" the motor vehicle for her own use. *Id*. at 27.

Swoope should have known that the motor vehicle was taken and used unlawfully. Still, Swoope argues that her case is different than *Spectrum* and *Ahmed*; therefore, this Court should not apply *Spectrum* or *Ahmed* to her case. Plaintiff inaccurately relies on *Monaco* to argue that *Ahmed* is not binding since it "incorrectly analyzed the [*Monaco*]." *Id*. at 28

In *Monaco v Home-Owners Ins Co*, 317 Mich App 738, 741-42; 896 NW2d 32 (2016), a 15-year-old was injured while operating a vehicle owned by her mother. The 15-year-old only had a driver's permit, which required that she drive accompanied by a licensed parent, guardian, or 21-year-old, but she was driving without anyone when the accident occurred. *Id*. Because the 15-year-old had received express permission from her mother to drive the vehicle by herself despite not having a license, a panel of this Court held that the 15-year-old's unlawful use of the vehicle did not negate the authorization and permission given by her mother to use the vehicle. *Id*. at 750.

Yet, *Ahmed* properly distinguished *Monaco* when the Court of Appeals found that *Monaco* "incorrectly analyzed the case from the perspective of the owner of the car rather than from that of the driver;" thus, "it also relied on the wrong statute in considering whether the conduct was 'unlawful.'" *Ahmed*, 337 Mich App at 20. The *Monaco* Court incorrectly relied on

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MCL 257.326, which provides that "[n]o person shall knowingly authorize or permit a motor vehicle owned by him or under his control to be driven by any person in violation of any of the provisions of [the Michigan Vehicle Code]." *Id*. (quoting *Monaco*, 317 Mich App at 750).

The *Ahmed* Court reasoned that *Monaco* should have instead considered whether the taking was unlawful from the perspective of the driver of the vehicle, which in Monaco was the 15-year-old, and "the person on whose behalf an 'entitle[ment] to be paid personal protection insurance benefits' was sought." *Id*. at 20. So, the Court in *Monaco* should have considered MCL 257.301(a), which provides that "an individual shall not drive a motor vehicle on a highway in this state unless that individual has a valid operator's or chauffeur's license[.]" *Id*.

The *Ahmed* Court held that because the 15-year-old did not have a valid driver's license to be driving unaccompanied, her violation of those provisions under the Michigan Vehicle Code was "'unlawful' within the meaning of *Spectrum* [] because there are associated criminal penalties." *Id*. The Court further reasoned "[a]s we have noted in this opinion, driving a car always constitutes a taking of it, but taking it does not always require driving." *Id*. at 20. And thus, had *Monaco* considered the question from the 15-year-old's perspective, "it should have concluded that her driving of the car constituted a taking and that the taking was unlawful because it was illegal under the Michigan Vehicle Code for [the 15-year-old] to drive alone." *Id*.

In *Ahmed*, the Plaintiff did not have a driver's license and was injured while operating a vehicle rented by his wife. *Id*. at 5. Ahmed testified that he had never read the rental agreement for the vehicle, that he believed his license had been restricted, and that he was driving within the terms of the restrictions at the time the motor vehicle accident occurred. *Id*. However, Ahmed's license had been revoked in 2015. *Id*.

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This Court has also addressed the difference between MCL 500.3113(a)'s standard, as interpreted by *Rambin* before it was amended, and MCL 500.3113(a)'s post-amendment language. In doing so, the *Ahmed* Court held:

> This case illustrates the difference between the two standards. We accept, as we must for purposes of a summary-disposition ruling, that plaintiff was unaware of the terms of the rental agreement, as he testified. Plaintiff thus lacked actual knowledge that an unlicensed driver was prohibited by the rental agreement from taking the car; under the previous version of the statute as interpreted in *Rambin*, that would not have constituted an unlawful taking because plaintiff did not knowingly take the car without the owner's authority. *Rambin*, 495 Mich. at 332, 852 N.W.2d 34. Nevertheless, the "should have known" language imposes a more restrictive standard. Plaintiff knew that the car was rented; he knew that there was a written rental agreement; and, of course, the law requires him to know his driving status, i.e., whether or not he is a licensed driver, because only a licensed driver may drive. MCL 257.301. Under the "should have known" standard, plaintiff was obligated to determine the scope of the authorization that the owner, Meade Lexus, had set under the rental agreement for a nonparty such as himself to take and drive the car. Stated another way, plaintiff knew that his wife, who was the party to the contractual agreement with Meade Lexus, was not the owner of the car and that any authority to use the car could only be based on the terms set by the owner. Thus, before simply driving off, plaintiff was obligated to learn the terms of the rental agreement; he "should have known" the terms 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. 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 26-27.

This Court reasoned that "[i]f Plaintiff, in fact, did not actually know that he was unlicensed, but by law he should have known that he was unlicensed; thus, Ahmed should have known that his taking of the car was unlawful." *Id*. at 27. The Court found that the Defendant insurer had demonstrated that MCL 500.3113(a) applied as Ahmed had taken the vehicle unlawfully within the meaning of MCL 750.414, had willingly operated and willingly used the vehicle, and "did so in circumstances under which, at minimum, he should have known that [ ],

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the car's owner, prohibited him from driving the car because he was not licensed to drive." *Id*. at 27-28.

Here, Swoope undoubtedly took Valentine's vehicle without authority, and Swoope's lack of a driver's license is still relevant to this Court's inquiry, as it was in *Ahmed.* Analogous to the plaintiff in *Ahmed*, Swoope knew that she did not have a driver's license on the date of the October 26, 2020, accident.[4] Under MCL 257.301(a), "an individual shall not drive a motor vehicle on a highway in this state unless that individual has a valid operator's or chauffer's license[.]" Because Swoope did not have a valid driver's license to operate a vehicle in Michigan, her use of the motor vehicle on October 26, 2020, violated MCL 257.301(a). Therefore, Plaintiff's use of the vehicle was unlawful.

Swoope's violation of MCL 257.301(a) was "unlawful" under *Spectrum*, just like the Plaintiff in *Ahmed*, "because there are associated criminal penalties." *Ahmed*, 337 Mich App 20 n 8. Swoope was operating and driving the motor vehicle at the time of the October 26, 2020, motor vehicle accident. There is no known testimony or evidence contradicting that Swoope willfully operated the motor vehicle. As the Court in *Ahmed* also stated, "driving a car always constitutes a taking of it, but it does not always require driving." *Id*. Accordingly, the facts demonstrate that Swoope unlawfully took and willfully operated Valentine's motor vehicle on October 26, 2020.

[4] Defendant-Appellee' Supplemental Brief, p 4.

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Conclusion

This Court has the scaffolding for a workable application of MCL 500.3113(a) to the facts in this case, as well as other cases that present similarly in the future. Only an objective standard, as applied in *Ahmed*, will provide the most practical application of law to these issues in future cases. Consequently, MCL 500.3113(a)'s disqualification is triggered when a person claiming benefits: (1) willing operates or uses a motor vehicle or motorcycle; (2) the motor vehicle was unlawfully taken; and (3) the person seeking benefits knew or should have known that the motor vehicle was unlawfully taken. Under MCL 500.3113(a), a taking occurs when the motor vehicle's owner did not give express permission to the ultimate user to take or use the motor vehicle. The taking or use is unlawful when the ultimate user knew or should have known that the owner did not authorize the taking or use.

Here, Swoope willfully took Valentine's motor vehicle when she took the keys and drove it to call on her mother. There are no facts to dispute that Swoope willfully operated and used Valentine's motor vehicle in this case. Swoope unlawfully took the vehicle, too. She did not have a valid driver's license and had a duty to know her driving status. Finally, Swoope did not have express or implied authority to use or take Valentine's motor vehicle. Despite her subjective belief, and just like the plaintiff in *Ahmed*, Swoope could not simply drive off with Valentine's motor vehicle without taking steps to determine if she could take the vehicle. Swoope admitted that she did not do anything to ensure that her taking of Valentine's vehicle was authorized. Swoope undoubtedly violated MCL 500.3113(a) and should be excluded from claiming PIP benefits for this accident.

This Court should affirm the Court of Appeals and reverse the trial court's Order denying Defendant-Appellee Citizens' Motion for Summary Disposition.

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WHEREFORE Amici Michigan Defense Trial Counsel respectfully requests that this Honorable Court affirm the Court of Appeals and GRANT Defendant-Appellee Citizens' Motion for Summary Disposition under MCR 2.116(C)(10) and MCL 500.3113, and Order that the lower Court dismiss Plaintiff-Appellant Carlonda Swoope's claims for PIP benefits.

RESPECTFULLY SUBMITTED

SCARFONE & GEEN, PC

By: */s/ Daniel M. Campbell*
JOHN C.W. HOHMEIER (P75187)
DANIEL M. CAMPBELL (P85598)
SCARFONE & GEEN, PC
Attorneys for Defendant-Appellant

Dated: August 27, 2025

This Brief contains 3,680 words as allowed under MCR 7.312(A)(1) and MCR 7.212(B)(1).