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# STATE OF MICHIGAN

# COURT OF APPEALS

TIBURCIO PENA-CRUZ and JONATHAN PENA-GARCIA,

Plaintiffs-Appellees,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

and

MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY and JOHN DOE INSURANCE COMPANY,

Defendants.

FOR PUBLICATION
October 02, 2026
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No. 364284
Wayne Circuit Court
LC No. 21-014679-NF

ON REMAND

Before: O'BRIEN, P.J., and BORRELLO and BOONSTRA, JJ.

O'BRIEN, P.J.

This case returns to this Court following remand from our Supreme Court. The issue in this case is whether MCL 500.3113(a) disqualified plaintiff Tiburcio Pena-Cruz from recovering no-fault benefits. MCL 500.3113(a) disqualifies a person from receiving no-fault benefits if, at the time of the accident, the person claiming benefits was using a vehicle that "was taken unlawfully," and the person knew or should have known that the vehicle was taken unlawfully. MCL 500.3113(a). The dispute on appeal is whether the F-150 truck that Tiburcio was driving at the time of the collision was "taken unlawfully" within the meaning of MCL 500.3113(a). We previously concluded that Tiburcio took the vehicle unlawfully because we were bound by *Swoope v Citizens Ins Co of the Midwest*, 350 Mich App 104, 107; 29 NW3d 695 (2023), rev'd ___ Mich ___ (2026) (*Swoope I*), to conclude that Tiburcio's use of the F-150 without the owner's

permission while knowing that he did not have a valid driver's license rendered the taking "unlawful" for purposes of MCL 500.3113(a). *Pena-Cruz v State Farm Mutual Auto Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2024 (Docket No. 364284), p 14, vacated by ___ Mich ___; 34 NW3d 857 (2026). Our Supreme Court reversed *Swoope I*, holding that the panel erred by concluding that the "plaintiff's unlawful operation of the car barred her from recovering PIP benefits" because the relevant inquiry is not whether the vehicle was *operated* unlawfully but whether the vehicle was *taken* unlawfully. *Swoope v Citizens Ins Co of the Midwest*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. No. 166790) (*Swoope II*); slip op at 17. Our Supreme Court thereafter vacated this Court's prior opinion and remanded this case "for reconsideration in light *Swoope* [*II*]." *Pena-Cruz v State Farm Mut Auto Ins Co*, ___ Mich ___, ___; 34 NW3d 857, 857 (2026). Doing so, we announce a new test for the situation presented in this case.

Cases addressing the phrase "taken unlawfully" as used in MCL 500.3113(a) generally fall into two categories: those in which an owner explicitly gave the driver permission to take the owner's vehicle and those in which the owner explicitly forbade the driver from taking the owner's vehicle. This case presents a third situation: the owner of the vehicle in this case neither gave Tiburcio permission to take her vehicle nor forbade Tiburcio from taking the vehicle. We hold that, in these circumstances, the relevant inquiry is whether the driver took the vehicle with the owner's implied permission. This determination will depend on all the facts and circumstances surrounding the driver's taking of the vehicle, as well as the driver's previous use of the vehicle. The trial court in this case relied exclusively on a chain-of-permissive-use theory to conclude that a genuine issue of material fact existed as to whether Tiburcio lawfully took the F-150. We vacate that holding and remand for the trial court to apply the test announced in this opinion.

## I. BASIC FACTS

The facts of this case were thoroughly laid out in this Court's prior opinion, see *Pena-Cruz*, unpub op at 2-4, and we will only briefly recite them here.

Plaintiffs, Tiburcio and his son, Jonathan Pena-Garcia, were involved in a serious car collision on December 19, 2020, while Tiburcio was driving. The collision occurred while Tiburcio was stopped on the roadway waiting for an accident to clear. A second driver failed to see Tiburcio's stopped vehicle and rear-ended him.

Tiburcio was driving an F-150 solely owned by his wife, Maria Garcia-Lopez. Despite being married, Tiburcio and Maria were not living together, and they had not lived together for about two years prior to the collision. Maria purchased the F-150 involved in the collision in March 2020, and Tiburcio confirmed that he and Maria were not living together at that time.

Jonathan lived with Maria, and on the day of the collision, Maria gave Jonathan permission to take her F-150. Maria denied giving Tiburcio permission to drive the F-150 on December 19, 2020, and she confirmed that Tiburcio had never driven the F-150 prior to that day. When asked if she would have let Tiburcio drive the F-150, Maria said, "Well, no, he doesn't have a license."

Tiburcio was the only individual who testified about how he came to be driving Maria's F-150 on the date of the collision. Tiburcio explained that, on the morning of the collision, Jonathan

was giving Tiburcio a ride to work. Jonathan arrived at Tiburcio's house very early in the morning, and Jonathan told Tiburcio that he was tired. So, according to Tiburcio, "it just made sense for [Tiburcio] to drive." Tiburcio testified that he was not licensed to drive, but he nevertheless took the F-150 and drove it. Tiburcio knew that Maria was the owner of the F-150, and the day of the collision was the first time that he drove the F-150. When asked whether he had permission to drive the F-150, Tiburcio testified, "So, no. No, I didn't ask for permission. As I've been saying, he came here to pick me up, my son, and he was tired so it just—it was easy for me to just drive to work then." Tiburcio testified that even when he was living with Maria, he did not have keys to any vehicles—only house keys.

Following the collision, Tiburcio sought no-fault benefits from defendant State Farm Mutual Automobile Insurance Company. When State Farm refused to pay Tiburcio's benefits, Tiburcio brought this action.

Following discovery, State Farm moved for summary disposition, arguing that Tiburcio unlawfully took Maria's F-150 on the day of the collision, so MCL 500.3113(a) disqualified him from receiving no-fault benefits. State Farm argued that Tiburcio took the F-150 unlawfully because Tiburcio never received Maria's permission to drive it, and Tiburcio had no reason to believe that Maria would allow Tiburcio to take the F-150 in light of the fact that Tiburcio did not have a driver's license and had never used the F-150 before.

In response, Tiburcio argued that his taking of the F-150 was lawful because Tiburcio received permission to drive the vehicle from Jonathan, who Maria had allowed to take the vehicle, and Maria never told Jonathan or Tiburcio that Tiburcio was not allowed to use the F-150.

Following a hearing, the trial court concluded that there was a genuine issue of material fact whether Tiburcio unlawfully took the F-150. The court agreed with Tiburcio that, because Maria never expressly prohibited Tiburcio from driving the F-150, the fact that Jonathan—who had Maria's permission to take the F-150—gave Tiburcio permission to take the F-150 created a genuine issue of material fact whether Tiburcio's taking of the F-150 was lawful.

State Farm then filed an application for leave to appeal, which this Court granted.[1]

## II. STANDARD OF REVIEW

A grant or denial of a motion for summary disposition is reviewed de novo. *McMaster v DTE Energy Co*, 509 Mich 423, 431; 984 NW2d 91 (2022). State Farm moved for summary disposition under MCR 2.116(C)(10). A (C)(10) motion "tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Summary disposition under MCR 2.116(C)(10) is proper when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." When considering a (C)(10) motion, a court must consider all of the evidence submitted—including affidavits, pleadings, depositions, admissions, and other evidence, see MCR 2.116(G)(5)—in the light most

[1] *Pena-Cruz v State Farm Mut Automobile Ins Co*, unpublished order of the Court of Appeals, issued May 17, 2023 (Docket No. 364284).

favorable to the party opposing the motion. *Maiden*, 461 Mich at 120. If "the proffered evidence fails to establish a genuine issue regarding any material fact," then whether the moving party is entitled to judgment becomes a question of law for the court to decide. *Id*.

## III. ANALYSIS

State Farm argues on appeal that Tiburcio's taking of Maria's F-150 was unlawful, and thus MCL 500.3113(a) disqualified him from receiving no-fault benefits, because Tiburcio did not have Maria's express permission to take the F-150, and Tiburcio had no reason to believe that his taking of the F-150 was lawful considering that he lacked a valid driver's license. Tiburcio counters that his taking of the F-150 was lawful because Maria did not expressly prohibit him from using the F-150, and he took the F-150 with permission from Jonathan, who had Maria's permission to use the F-150. The parties thus fundamentally disagree about what Maria's silence as to whether Tiburcio had permission to take her vehicle means for purposes of analyzing whether Tiburcio unlawfully took Maria's F-150 on the day of the collision.

This stems in part from the fact that cases addressing whether a vehicle was "taken unlawfully" as that phrase is used in MCL 500.3113(a) have, generally, not addressed this situation. Those cases can generally be divided into two categories: (1) express-prohibition cases, in which the owner expressly prohibited the claimant from using the owner's vehicle, making the claimant's taking of the vehicle unlawful for purposes of MCL 500.3113(a); and (2) express-permission cases, in which the owner or purported owner expressly permits the claimant to take the owner's vehicle, making the claimant's taking of the vehicle lawful for purposes of MCL 500.3113(a). This case falls into a third category—when Tiburcio took the F-150, he knew it was owned by Maria, but Maria never said anything about whether Tiburcio could take or use the F-150; she neither prohibited it nor permitted it.

We hold that, in this third category, whether the driver unlawfully took the owner's vehicle depends on whether the driver had the owner's implied permission to take the vehicle. This analysis is concerned with whether the *owner* gave the driver permission or authorization to take and use the owner's vehicle, but the test is viewed from the *driver's* perspective. While this approach of analyzing this type of case is new, it has its roots in numerous cases interpreting MCL 500.3113(a).

### A. MCL 500.3113(A)

We start with the language of the statute at issue. MCL 500.3113(a) provides:

> 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.

As this court explained in *Ahmed v Tokio Marine Am Ins Co*, 337 Mich App 1, 10; 972 NW2d 860 (2021), MCL 500.3113(a)'s "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*, 337 Mich App at 10. See also *Swoope II*, ___ Mich at ___; slip op at 15 (confirming that *Ahmed*'s reading of MCL 500.3113(a) was correct).

The parties dispute the second and third elements, but at the heart of this appeal is the second element—whether Tiburcio unlawfully took Maria's F-150. So, in this opinion, we endeavor to explain what it means for someone to unlawfully take a motor vehicle when the owner of the vehicle neither permitted nor forbade the end-user from taking and using the owner's vehicle.

## B. "TAKEN UNLAWFULLY"

The seminal case addressing MCL 500.3113(a)'s use of the phrase "taken unlawfully" is *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503; 821 NW2d 117 (2012).[2] There, our Supreme Court held that the plain meaning of the phrase "readily embraces a situation in which an individual gains possession of a vehicle contrary to Michigan law." *Id*. at 516-517. See also *Swoope II*, ___ Mich at ___; slip op at 14. The Court then identified two statutes that prohibit "takings"—MCL 750.413 and MCL 750.414. *Spectrum Health*, 492 Mich at 517. Both statutes, the Court explained, "effectively defin[ed]" an unlawful taking as a taking of a vehicle "without the authority of the owner, regardless of whether the person [taking the vehicle] intended to steal it." *Id*. at 517-518.

*Spectrum Health* was a consolidated case, and each case was an express-prohibition case. As most relevant to this appeal, in one case, Craig Sr. had explicitly forbidden his son, Craig Jr., from using Craig Sr.'s car. *Id*. at 512. Craig Sr. said this in front of Craig Jr.'s girlfriend, Kathleen, to whom Craig Sr. entrusted his car. *Id*. But that night, Kathleen gave Craig Jr. the keys to Craig Sr.'s car, and Craig Jr. took Craig Sr.'s car, was involved in a collision, and was injured. *Id*. The lower courts ruled that MCL 500.3113(a) did not disqualify Craig Jr. from receiving PIP benefits because there was a "chain of permissive use"—Craig Sr. had permitted Kathleen to take Craig Sr.'s car, and Kathleen permitted Craig Jr. to take Craig Sr.'s car. *Id*.

Our Supreme Court in *Spectrum Health* held that this application of the chain-of-permissive-use theory was inconsistent with the plain language of MCL 500.3113(a). *Id*. at 521. The chain-of-permissive-use theory, the Court explained, was premised on the idea that "when an owner loans his vehicle to another, it is foreseeable that the borrower may thereafter lend the vehicle to a third party," so the third party, "by implication," takes the vehicle "with the consent of the owner." *Id*. at 520-521. This analysis was inconsistent with MCL 500.3113(a), according to the *Spectrum Health* Court, because it analyzed whether a vehicle was "taken unlawfully" for

[2] Despite significant changes to MCL 500.3113(a) since *Spectrum Health* analyzed the statute, the statute still uses the phrase "taken unlawfully," and the meaning of that phrase remains unchanged. See *Swoope II*, ___ Mich at ___; slip op at 14.

purposes of MCL 500.3113(a) from the perspective of the owner—it considered whether the *owner* could have foreseen the vehicle being taken by the end-user, but MCL 500.3113(a) "examines the legality of the taking from the *driver's* perspective." *Id*. at 522. "What is relevant to this determination is whether the taking was 'without authority' within the meaning of MCL 750.413 or MCL 750.414." *Id*. at 523. And because "Craig Jr. took the vehicle *contrary to the express prohibition of the vehicle's owner* (his father)," Craig Jr. took the vehicle "without authority contrary to MCL 750.414." *Id*. at 524.

Our Supreme Court next addressed MCL 500.3113(a) in *Rambin v Allstate Ins Co*, 495 Mich 316; 852 NW2d 34 (2014). Much of *Rambin*'s holding is no longer relevant due to subsequent amendments to MCL 500.3113(a),[3] but as relevant to this case, *Rambin* reaffirmed several key points from *Spectrum Health*. First, *Rambin* confirmed that "a person cannot take a vehicle contrary to an owner's express prohibition and maintain that he or she did not 'unlawfully take' the vehicle under MCL 500.3113(a)" because that violates MCL 750.413 and MCL 750.414, and any person who takes a vehicle in violation of MCL 750.413 or MCL 750.414 "has taken the vehicle unlawfully within the meaning of MCL 500.3113(a)." *Rambin*, 495 Mich at 326-327. Second, *Rambin* confirmed that a person does not take a vehicle unlawfully "solely on the basis" that the person took the "vehicle without the owner's permission" because "the phrase 'taken unlawfully' must be considered from the driver's perspective." *Id*. at 324 n 7. This latter point was particularly relevant to *Rambin* because it created a genuine issue of material fact whether *Rambin* was an express-permission case—the plaintiff in *Rambin* was injured while driving a stolen motorcycle that was loaned to him, and he testified that he believed that the person who loaned him the motorcycle was the motorcycle's owner. *Id*. at 327.

The meaning of "taken unlawfully" as used in MCL 500.3113(a) then developed in this Court. This Court addressed the phrase in *Monaco v Home-Owners Ins Co*, 317 Mich App 738; 896 NW2d 32 (2016), which, like *Rambin*, was an express-permission case. In *Monaco*, the plaintiff's 15-year-old daughter, Alison, was injured while driving the plaintiff's car. *Id*. at 741.

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[3] The broad question before the *Rambin* Court was whether the plaintiff had unlawfully taken a motorcycle within the meaning of MCL 500.3113(a), but the more granular question was whether MCL 750.414 had a scienter requirement because, if it did not, then plaintiff would not have violated it, and thus would not have taken the motorcycle at issue unlawfully within the meaning of MCL 500.3113(a). *Rambin* concluded that MCL 750.414 does have a scienter requirement—it "requires a showing of knowingly taking without authority or knowingly using without authority." *Rambin*, 495 Mich at 332.

In *Ahmed*, this Court opined that an amendment to MCL 500.3113(a) added a scienter requirement to the statute, which had the effect of "amend[ing] *Rambin*'s scienter standard involving MCL 750.414 in cases in which disqualification from eligibility for benefits under MCL 500.3113(a) is at issue." *Ahmed*, 337 Mich App at 24-25. *Ahmed* accordingly held that, when disqualification of PIP benefits under MCL 500.3113(a) is at issue, there was not a strict knowledge requirement to find a violation of MCL 750.414; rather, a person acts unlawfully under MCL 750.414 for purposes of MCL 500.3113(a) if the person takes a motor vehicle and either knows or should have known that the taking was without the vehicle owner's authority. *Ahmed*, 337 Mich App at 25-26.

The plaintiff expressly allowed Alison to take the plaintiff's vehicle by herself, even though the plaintiff and Alison knew that it was illegal for Alison to drive the vehicle alone. *Id*. at 741-742. On appeal, the insurer argued that Alison's illegal use of the car disqualified her from receiving no-fault benefits under MCL 500.3113(a). *Monaco*, 317 Mich App at 746. This Court rejected that argument, holding instead that Alison's unlawful use of the motor vehicle did not render the taking of the car unlawful for purposes of MCL 500.3113(a). *Id*. at 748-749. "[T]he unlawful operation or use of a motor vehicle is simply not a concern in the context of analyzing whether the vehicle was taken unlawfully." *Id*. at 749.

This Court next meaningfully addressed the phrase "taken unlawfully" as used in MCL 500.3113(a) in *Ahmed*, 337 Mich App 1. *Ahmed* was an express-prohibition case. The plaintiff in *Ahmed* was injured while driving a car rented by his wife. *Id*. at 5. As part of the rental agreement that the plaintiff's wife signed, only "Authorized Drivers" could operate the rental vehicle, and an individual needed a valid driver's license to be an "Authorized Driver." *Id*. The plaintiff did not have a valid driver's license, however, and even though he was with his wife when she rented the vehicle, he never read the rental agreement. *Id*. Still, this Court held that, on these facts, the plaintiff took the vehicle unlawfully because the terms of the rental agreement expressly prohibiting individuals like plaintiff from using the vehicle. *Id*. at 12-15.[4]

This Court also addressed the meaning of "taken unlawfully" as used in MCL 500.3113(a) in *Bradley v Westfield Ins Co*, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 365828), and *VHS of Michigan, Inc v State Farm Mut Auto Ins Co*, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 365479). *Bradley* was an express-permission case because the vehicle's owner allowed the driver to take her vehicle; this Court accordingly held that the taking was lawful. *Bradley*, ___ Mich App at ___; slip op at 1; 12. *VHS of Michigan* was also an express-permission case. While the vehicle that the plaintiff in *VHS of Michigan* was driving at the time of his injury had been stolen, the individual that the plaintiff believed owned the vehicle had voluntarily transferred possession of the vehicle to the plaintiff, so this Court held that the plaintiff's "taking" of the vehicle was lawful. *VHS of Michigan*, ___ Mich App at ___; slip op at 8-9.

The only case decided by an appellate court of this state in which the owner neither expressly prohibited nor permitted the injured driver from taking the owner's vehicle was *Swoope I*. There, this Court held that, because "the vehicle's owner did not give [the injured driver] permission to drive" the owner's vehicle, and because the driver "did not have a valid license," the driver's taking of the owner's vehicle was unlawful.[5] *Swoope I*, 350 Mich App at

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[4] It did not matter whether the plaintiff in *Ahmed* knew that he was unlawfully taking the vehicle because this Court held that he "should have known" that his taking the vehicle was unlawful, as it was obvious from a "cursory review of the rental agreement" that an individual without a valid license was not permitted to take the car. *Id*. at 27.

[5] Confusingly, this Court in *Bradley* stated that "[t]he facts of *Swoope* cannot be meaningfully distinguished from the facts of *Monaco*" because "[i]n each case, a vehicle was operated *with the owner's permission* but without a valid license." *Bradley*, ___ Mich App at ___; slip op at 12 (emphasis added). This was obviously incorrect because the vehicle in *Swoope* was not taken or

111. Our Supreme Court held that this was error because "[t]he correct inquiry requires a court to focus on whether the *taking* of the vehicle was unlawful, not whether the *operation* of the vehicle was unlawful." *Swoope II*, ___ Mich at ___; slip op at 17. The Court did not, however, explain how to analyze a taking when the owner neither expressly permitted nor prohibited the driver from taking the owner's vehicle. The Court instead simply reversed this Court's holding and remanded for this Court to address the defendant's argument "regarding how plaintiff's taking of the vehicle was unlawful." *Id*. at ___; slip op at 18.

Consequently, there is no binding caselaw addressing the factual situation at issue in this case. In all the cases that have addressed the meaning of "taken unlawfully" as used in MCL 500.3113(a), there was no dispute that the owner (or, in *Rambin* and *VHS of Michigan*, the purported owner) spoke directly on the issue of whether the driver was authorized to take the vehicle. In *Ahmed* and *Spectrum Health*, the owner expressly prohibited the plaintiffs from taking the owners' vehicles. In *Rambin*, *Monaco*, *Bradley*, and *VHS of Michigan*, the owner (or purported owner) expressly permitted the plaintiffs to take the vehicles. But in this case, Maria (the owner of the F-150) was silent as to whether Tiburcio could take her F-150.

Still, two general rules emerge from these cases that guide how situations like that presented by the instant case should be analyzed. First, when determining whether a vehicle was "taken unlawfully" within the meaning of MCL 500.3113(a), the focus is on the legality of the *taking* of the vehicle, which is distinct from whether the subsequent use of the vehicle was legal. *Monaco*, 317 Mich App at 749 *VHS of Michigan*, ___ Mich App at ___; slip op at 9. See also *Swoope II*, ___ Mich at ___; slip op at 17.

Second, and critically for present purposes, whether an individual took a vehicle "unlawfully" depends on whether the taking was "without authority." *Spectrum Health*, 492 Mich at 518. See also MCL 750.413 and MCL 750.414. The "authority" with which this analysis is concerned is the *owner's* authority. *Spectrum Health*, 492 Mich at 518. This determination is not concerned with whether the owner actually authorized the taking, however; the legality of the taking is considered "from the *driver's* perspective." *Id*. at 522. *Rambin*, 495 Mich at 324 n 7. Stated more simply, whether an individual took a vehicle unlawfully depends on whether, from the driver's perspective, the driver had the owner's permission to take the owner's vehicle.

## C. IMPLIED PERMISSION

With these general rules in mind, we return to the instant dispute. As already explained, the parties each insist that Maria's silence as to whether Tiburcio could take Maria's F-150 supports their position. We reject both parties' argument and conclude that Maria's silence on this issue does not support either side but instead requires further inquiry.

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operated with the owner's permission. It necessarily follows that *Bradley* was incorrectly decided to the extent it held that *Swoope I* was nonbinding under the "first-out rule," see *id*. at ___; slip op at 12, though that holding is irrelevant now because *Swoope I* was ultimately reversed by our Supreme Court.

Consider the following examples. If a stranger takes a person's vehicle to run an errand with the intent to return the vehicle after the errand is complete, it would be extraordinary to say that the taking was lawful because the owner of the vehicle did not explicitly prohibit the stranger from taking their vehicle. Conversely, if a married couple routinely borrowed each other's cars without first asking permission, it would be extraordinary to say that each person was unlawfully taking the other's car because they did not ask permission first.

As these examples illustrate, the lack of an express statement by the owner about whether a driver's use of a vehicle is authorized does not by itself suggest that a taking was authorized or unauthorized. Courts must instead consider whether the driver was taking the vehicle with the owner's *implied* authority or permission. This determination will depend on all the facts and circumstances surrounding the driver's taking of the vehicle (including any acts, words, or conduct that would have suggested to the driver that he or she was taking the vehicle with the owner's authority or permission), as well as the driver's previous use of the vehicle (including a course of conduct consisting of frequent or habitual takings of the vehicle with the owner's knowledge and acquiescence, such that the driver would understand that his or her subsequent taking of the vehicle was with the owner's authority or permission). Accord 8A Couch, Insurance, 3d, § 118:36 ("Implied permission is manifested by some acts, words, or conduct of the person granting the insured permission to use the automobile or a course of conduct consisting of prolonged, frequent, and habitual use of the subject vehicle with the owner's knowledge and acquiescence."). This inquiry will always view the legality of the taking from *the driver's* perspective, but the determinative question is whether, from the driver's perspective, *the owner* impliedly permitted or authorized the driver's taking of the owner's vehicle. See *Spectrum Health*, 492 Mich 518-519, 522; *Rambin*, 495 Mich at 324 n 7.[6]

The trial court here did not inquire into whether Tiburcio took Maria's F-150 with Maria's implied permission, so we vacate the trial court's holding and remand for the trial court to conduct

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[6] In *Landon v Titan Ins Co*, 251 Mich App 633, 635-636; 651 NW2d 93 (2002), the plaintiff was injured while driving a vehicle that the owner had left in the plaintiff's yard with the owner's permission, but the owner never told the plaintiff that she was permitted to use the vehicle. The plaintiff nevertheless took the vehicle and was injured. *Id*. at 635. The *Landon* Court was tasked with determining whether, under these facts, the plaintiff had unlawfully taken the owner's vehicle for purposes of MCL 500.3113(a). *Id*. at 637-638. This Court concluded that the plaintiff had not unlawfully taken the vehicle in relevant part because the plaintiff had the owner's "implied consent to use the vehicle." *Id*. at 648.

*Landon*'s analysis is not particularly helpful for present purposes because the concept of "implied consent" on which *Landon* relied was imported from the owner's liability statute, MCL 257.401, and caselaw interpreting that statute. See *Landon*, 251 Mich App at 646-648. Our Supreme Court in *Spectrum Health* explicitly disavowed this type of analysis for purposes of determining whether a vehicle was "taken unlawfully" for purposes of MCL 500.3113(a), explaining that when "examining whether a taking is unlawful within the meaning of MCL 500.3113(a), it is irrelevant whether the taking would have subjected the vehicle's owner to vicarious liability under MCL 257.401." *Spectrum Health*, 492 Mich at 523.

this analysis in the first instance. But we take this opportunity to clarify how the parties' respective arguments function in the analysis set forth in this opinion.

Tiburcio argues, and the trial court agreed, that there was a genuine issue of material fact whether Tiburcio's taking of the F-150 was lawful because Tiburcio took the F-150 with Jonathan's permission, and Jonathan had Maria's permission to use the F-150. This fact is not dispositive, however. Indeed, it is only relevant that Tiburcio took the F-150 with Jonathan's permission insofar as that relates to Tiburcio's understanding about whether he was taking the F-150 with Maria's authorization or permission. This is because, again, the relevant inquiry is whether, from the driver's perspective, the driver had *the owner's* implied permission or authorization to take the vehicle.[7]

State Farm argues that Tiburcio would have known that Maria would not have authorized Tiburcio's taking of Maria's vehicle because Tiburcio did not have a valid driver's license. While this, too, is relevant, it is also not dispositive. That Tiburcio did not have a valid license when he took Maria's vehicle is only relevant insofar as it affected Tiburcio's understanding of whether Maria would have allowed Tiburcio to take her vehicle.[8]

To be clear, while neither of the parties' arguments on appeal are dispositive, we are not concluding that there exists a genuine issue of material fact and that this case should proceed to trial—we offer no opinion on that matter. We are instead remanding this case for the trial court to analyze the facts of this case under the test set forth in this opinion to determine whether Tiburcio had Maria's implied permission or authorization when he took Maria's vehicle on the morning of the collision. As explained, this will depend on all of the facts and circumstances surrounding Tiburcio's taking of Maria's F-150 that morning as well as Tiburcio's past use of the F-150 (and other vehicles owned by Maria).

## IV. CONCLUSION

Cases addressing whether a vehicle was "taken unlawfully" for purposes of MCL 500.3113(a) generally fall into two categories: express-prohibition cases and express-permission cases. This case falls into a third category—the owner of the vehicle neither permitted nor forbade the driver from taking the owner's vehicle. To determine whether a vehicle was "taken

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[7] The trial court thus erred both because (1) when the owner is silent as to whether a driver has permission to use the owner's vehicle, courts are to engage in a totality-of-the-circumstances analysis, and the court here relied on only a single fact and found that fact dispositive; and (2) the court never analyzed whether Tiburcio would have understood that he was taking Maria's F-150 with *Maria's* permission or authorization—the court found only that Tiburcio took the F-150 with Jonathan's permission.

[8] That Maria testified that she would not have allowed Tiburcio to take her F-150 because "he doesn't have a license" is also not dipositive because the determinative inquiry is whether, from *the driver's perspective*, the driver was taking the vehicle without the owner's permission. That said, Maria's testimony is certainly relevant to the extent that Tiburcio was aware of Maria's general feelings towards Tiburcio's use of her vehicles.

unlawfully" when the owner did not permit or forbid the driver from taking the owner's vehicle, courts must determine whether the driver took the vehicle with the owner's implied permission. This determination will depend on all the facts and circumstances surrounding the driver's taking of the vehicle, as well as the driver's previous use of the vehicle. While the legality of the taking must be viewed from the driver's perspective, the determinative question is whether the owner impliedly permitted or authorized the driver's taking of the owner's vehicle. Because the trial court did not conduct this analysis for the facts of this case, we vacate the trial court's ruling and remand for the trial court to analyze the facts of this case using the test set forth in this opinion.

Vacated and remanded for further proceedings. We do not retain jurisdiction.

/s/ Colleen A. O'Brien
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra