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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 21, 2026 10:08 AM
v	No. 372370 Wayne Circuit Court
ANTHONY WESLEY TYLER, Defendant-Appellant.	LC No. 22-000790-01-FC

Before: MURRAY, P.J., and BOONSTRA and RIORDAN, JJ.

MURRAY, P.J. (*concurring*).

I concur with the majority opinion, but briefly write separately to address the prosecution's main argument on appeal, i.e., that *People v Posey*, 512 Mich 317, 359; 1 NW3d 101 (2023) (opinion by BOLDEN, J.) (*Posey I*), should not be considered precedential, and that our Court strayed from long-standing precedent in concluding that *Posey* should be treated as binding precedent despite being a plurality opinion. The prosecution is correct, as it appears this Court decided to adhere to *Posey*'s result for efficiency and stability in the law, rather than what the law on stare decisis requires.

It has always been the case that legal statements or conclusions in a Supreme Court decision are not binding on the lower courts unless a majority of the court agreed to those conclusions. See *Breckon v Franklin Fuel Co*, 383 Mich 251, 278-279; 174 NW2d 836 (1970), overruled on other grounds by *Smith v Detroit*, 388 Mich 637 (1972) ("A decision by an equally divided court does not establish a precedent required to be followed under the stare decisis doctrine. And where the members of the court unanimously or by majority vote reach a decision but cannot, even by a majority, agree on the reasoning therefor, no point of law is established by the decision and it cannot be a precedent covered by the stare decisis rule.") (quotation marks and citation omitted); *Kalamazoo v Crawford*, 154 Mich 58, 59; 117 NW 572 (1908) ("It has been held by many courts that a decision by a divided court does not settle the law for other cases."); *Fogarty v Dep't of Transp*, 200 Mich App 572, 574-575; 504 NW2d 710 (1993) ("[W]here a majority reaches a decision, but does not agree on the underlying reasoning, no point of law is established by the decision.").

This Court previously recognized that *Posey* was not binding under stare decisis because the reasoning for striking down the first sentence of MCL 769.34(10) was not agreed to by a majority of justices. See *People v Posey (On Remand)*, 349 Mich App 199, 202-203; 27 NW3d 137 (2023) (*Posey II*), and *People v Purdle (On Remand)*, 350 Mich App 446, 452-453; 32 NW3d 479 (2024). Despite this, our Court held that "in the interest of judicial economy and jurisprudential stability, we will apply to the instant case the essential holdings upon which a *Posey* majority agreed." *Purdle*, 350 Mich App at 453-454. See more recently *People v Brcic*, ___ Mich App ___, ___ n 8; ___ NW3d ___ (2026) (Docket Nos. 362727 and 366230); slip op at 10 n 8.

As the prosecution argues, because *Posey* is not binding this Court should have independently determined if MCL 769.34(10) is constitutional. For one, we should not follow a non-binding decision of the Supreme Court simply because a majority of that Court agreed on a result, but not the rationale getting to that result. To do so is inconsistent with the well-established law cited earlier that dates back to the early 1900s. Additionally, requiring that a majority of justices agree on *why* a statute is unconstitutional is critically important, as declaring a statute unconstitutional is *supposed to be* difficult, particularly because of the presumption of constitutionality given to statutes. See *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 11; 740 NW2d 444 (2007), and *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). Finally, prior to *Posey,* our Court had held that MCL 769.34(10) was constitutional even after *People v Lockridge*, 498 Mich 358; 870 NW2d 502 (2015), thus providing binding caselaw enforcing MCL 769.34(10). See *People v Schrauben*, 314 Mich App 181, 196; 886 NW2d 173 (2016), overruled on other grounds by *Posey I*; *People v Willis*, 322 Mich App 579, 593-594; 914 NW2d 384 (2018); *People v Jackson*, 320 Mich App 514, 527; 907 NW2d 865 (2017), reversed on other grounds 504 Mich 929 (2019).

In considering the constitutional validity of MCL 769.34(10), this Court should have adopted the reasoning of then Chief Justice Clement and concluded that the statute passes constitutional muster under both the Sixth Amendment to the United States Constitution, and the right to appeal provision of our State Constitution, Const 1963, art 1, § 20. See *Posey*, 512 Mich at 433-445 (CLEMENT, C.J., joined by ZAHRA, J. and VIVIANO, J., concurring in part). But because this Court instead chose to enforce the plurality ruling from *Posey* in published decisions, we are essentially left to follow suit.

/s/ Christopher M. Murray