

MSC Opinion: Third-degree home invasion under MCL § 750.110a(4)(a) is a necessarily included lesser offense of first-degree home invasion under MCL § 750.110a(2)

1. April 2010

On March 30, 2010, the Supreme Court issued an opinion in *People v. Wilder*, No. 137562, holding that the crime of third-degree home invasion under MCL § 750.110a(4)(a) is a necessarily included lesser offense of first-degree home invasion under MCL § 750.110a(2) where all the elements required to convict the defendant for third-degree home invasion based on the misdemeanor of larceny were subsumed within the elements required to convict him of first-degree home invasion based on larceny. In an opinion by Justice Hathaway, joined by Justices Weaver, Corrigan, Young, and Markman, the Court reversed the Court of Appeals and reinstated the defendant's conviction and sentence for third-degree home invasion. Justices Corrigan and Cavanagh each wrote separate opinions concurring in the result but highlighting their respective disagreements with the majority's interpretation of the statute. A copy of the Court's opinion can be found [here](#).

Wilder involved a criminal defendant's appeal of a bench-trial conviction for third-degree home invasion under MCL § 750.110a(4). The trial court found that the defendant entered the home of his aunt without permission and committed larceny by unplugging and carrying out her television set. The court also found that when the aunt protested, the defendant lifted his shirt to reveal a handgun. Although the defendant had not been charged with third-degree home invasion but rather first-degree home invasion under MCL § 750.110a(2), the trial court convicted him of the lesser charge.

In the Court of Appeals, the defendant asserted that his conviction for third-degree home invasion violated his due-process rights, arguing that the crime is a cognate offense, not a necessarily included lesser offense, of the crime with which he was charged. The Court of Appeals agreed, concluding that the crime of third-degree home invasion includes an element that is not included in the crime of first-degree home invasion. Whereas first-degree home invasion requires proof of the commission or intent to commit a felony, third-degree home invasion requires proof of the commission or intent to commit a misdemeanor. The Court of Appeals viewed these as different and distinct elements and thus concluded that third-degree home invasion is a cognate offense, not a necessarily included lesser offense, of first-degree home invasion. Therefore, the Court of Appeals concluded, the defendant's conviction violated his due-process rights.

The Supreme Court rejected the Court of Appeals' approach as too general, since it decided the issue in the abstract based on the "possible alternative elements" that could apply under various scenarios in applying the statute, rather than confining its analysis to a "more narrowly focused evaluation" of the statutory elements that

were actually at issue in the case. Since the defendant's conviction for third-degree home invasion and his indictment for first-degree home invasion were both premised on the same underlying criminal conduct of larceny, the elements for the lesser offense were all subsumed within the elements of the greater offense. The Court explained that when dealing with a statute prescribing different degrees of offenses that can be committed by alternative means, such as with MCL § 750.110a, the reviewing court must examine the "charged predicate crime" underlying the crime charged to determine whether the elements are subsumed within the greater offense. With MCL § 750.110a(4), although that subsection provides for several alternatives for satisfying the elements of the offense, the only one actually at issue here was commission or intent to commit a misdemeanor (larceny), which is necessarily subsumed within the element required by MCL § 750.110a(2), commission or intent to commit larceny. It simply was not necessary to consider, as the Court of Appeals did, these other alternatives, since they were not at issue in this case. Since all the elements of the crime for which the defendant was actually convicted were subsumed within the elements of the crime with which he was actually charged, the defendant's conviction was proper and did not violate his due-process rights.

Although Justice Corrigan joined the majority opinion and agreed with its central rationale, she wrote separately to express her view that there was no need for the majority to resort to an analysis of whether the third-degree home invasion was a necessarily lesser offense; it was sufficient that the Legislature had formally divided the offense of home invasion into separate degrees, which in Justice Corrigan's opinion permits the fact finder to convict the defendant of the lesser-degreed offense as long as a rational view of the evidence supports the conviction.

Justice Cavanagh, in an opinion joined by Justice Kelly, concurred in part and dissented in part. He agreed that the majority had reached the correct result, but he disagreed with the majority's analysis, contending that the majority's interpretation of the term "inferior" in MCL § 768.32 "is contrary to the established definition and historical use of the term."