

MSC Order List: December 29, 2010

30. December 2010 By Madelaine Lane

On December 29, 2010, the Michigan Supreme Court denied two applications for leave to appeal, denied a motion for reconsideration and dismissed one appeal on stipulation of the parties.

In *Wilcox v. State Farm Mutual Automobile Ins. Co.*, Case No. 138602, the Court clarified its November 9, 2010 order remanding the case back to the Court of Appeals. Specifically, the Court directed the Court of Appeals that, to the extent there are material questions of fact pertaining to whether the expenses in the case are reasonable or reasonably necessary, those questions of fact must be decided by a jury. Justice Cavanagh, joined by Chief Justice Kelly and Justice Hathaway, agreed with the Court's clarification, but disagreed with the November 9, 2010 order vacating its order denying leave to appeal, for the reasons stated in his original dissent.

The Court also granted leave to appeal in one criminal case and released its latest orders in the matter of *Duncan v. State of Michigan*, which are discussed after the jump.

The Court denied the State of Michigan's motion to deem the Court's December 22, 2010 remarks as a final order in the matter of *Duncan v. State of Michigan*, Case Nos. 139345-7. Our post on the Court's November 30, 2010 decision to revive this class-action lawsuit concerning state public defenders can be found [here](#). Our discussion of the December 22, 2010 release of Chief Justice Kelly's concurrence and Justices Markman and Corrigan's dissenting opinions can be found [here](#). In its most recent order in this case, the Court denied the State of Michigan's motion for the reason that the December 22, 2010 statements were not an order because the statements did not modify the November 30, 2010 order. Therefore, the Court held that the deadline for filing a motion for reconsideration in this case was December 21, 2010. Because the State's motion was not filed until December 28, 2010, it was untimely. The Court noted that no further motions for reconsideration will be entertained. Justice Markman authored a dissenting opinion, joined by Justice Young.

Moreover, the Court also denied the State's motion for reconsideration of the November 30, 2010 order. A copy of this separate order is [here](#). The Court stated that there was no evidence that the November 30th order was erroneously entered. It is likely the Court rushed the release of its November 30th order granting reconsideration, releasing the opinion without Justice Corrigan's dissent, to assure that this motion for reconsideration of that order would be decided before Justice Davis departs the Court on January 1, 2011. Justices Corrigan and Markman authored dissenting opinions, both of which largely mirrored their previous statements in this case.

The Court granted leave to appeal in the matter of *People v. Moreno, Jr.*, Case No. 141837. On appeal, the Court directed the parties to address: 1) whether a person present in his or her home can lawfully resist a police officer who unlawfully and forcibly

enters the home, without violating MCL 750.81d; 2) if not, whether MCL 750.81d is unconstitutional; and, 3) whether a defendant being prosecuted under this statute may claim self-defense where he or she is resisting a police officer who unlawfully and forcibly enters the defendant's home. Justice Corrigan concurred in the order granting leave to appeal but wrote separately to encourage the parties to address whether the trial court erred in concluding that the exigent circumstances exception to the warrant requirement did not apply whether the police officer smelled burning marijuana while standing by the doorway of the defendant's home and claimed that the entry was necessary to prevent the imminent destruction of evidence.