

## MSC Order List: March 18, 2011

23. March 2011 By Layla Kuhl

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The Michigan Supreme Court ordered that trial court proceedings be stayed in *People v Pullen* while the application for leave to appeal remained pending in the Court of Appeals. Also after hearing oral arguments, the Court denied leave to appeal in five cases.

Finally, in *Bowens v Ary Inc*, the Michigan Supreme Court reversed the Court of Appeals and reinstated the trial court's grant of summary disposition in favor of defendants. This case involves application of the Michigan eavesdropping statute to defendants' videotaping of a conversation between plaintiffs and defendants. During that conversation, plaintiffs demanded that a video, which they believed to be unsuitable for a young audience, not be played during an upcoming concert. The concert included performances by Dr. Dre, Snoop Dogg, and Eminem, among others. Defendants did not play the video during the concert. But they used portions of a videotape of the conversation with plaintiffs in a "bonus track" of a DVD of the concert tour, which drew a worldwide audience. Plaintiffs sued alleging, among other things, defendants violated Michigan's Eavesdropping Statute.

In its order, the Court addressed whether plaintiffs' could have reasonably expected their conversation to be a private conversation under the Michigan Eavesdropping Statute, which prohibits audio recordings of "private conversations" without *all* of the parties' consent. Under the statute, a "private conversation" is one in which a person reasonably expects to be free from casual or hostile intrusion or surveillance. The Court concluded, as a matter of law, plaintiffs could not have reasonably expected their conversation to be private based on the circumstances under which the conversation took place.

Justice Kelly dissented, believing "that material questions of fact exist regarding whether plaintiffs could have reasonably expected their conversation with defendants to be private. Justice Kelly noted that "defendants' representatives explicitly acquiesced in plaintiffs' demand that the conversation be held in private," and that the record is silent as to whether video cameras were present during the conversation.