

MSC Order List: July 15, 2010

16. July 2010 By Aaron Lindstrom

The Michigan Supreme Court granted two applications for leave to appeal, remanded three cases to trial courts, remanded one case to the Court of Appeals as on leave granted, issued an order reversing the Court of Appeals in one case, issued two miscellaneous orders, and denied leave to appeal in 14 cases. Further details appear after the jump.

Grants. In *People v. Slaughter*, No. 141009, the Court granted the State's application. The Court directed the parties to address whether: (1) the actions of firefighters may fall under the "community caretaker" exception to probable-cause requirements; (2) the "emergency aid" aspect of the community-caretaker exception applies in this case; and (3) the Court of Appeals erred when it held that the firefighters were first obligated to attempt to remedy the condition for which a neighbor called by using means that did not involve entry into the defendant's home. The Court also invited the Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan to file *amicus curiae* briefs.

In *People v. Novak*, No. 140800, the Court granted the defendant's application and again invited the Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan to file *amicus curiae* briefs.

Remands. The Court remanded *Auto-Owners Insurance Co. v. Ferwerda Enterprises, Inc.*, No. 140735, for clarification as to whether Auto-Owners' claim was frivolous, *People v. Hobbs*, No. 140135, for resentencing, and *People v. Womack*, No. 139592, for a determination whether the failure to seek appellate review was caused by ineffective assistance of counsel.

Remand as on leave granted. The Court remanded *People v. Brown*, No. 139934, to the Court of Appeals with instructions to consider, as on leave granted, whether: (1) the defendant received the effective assistance of counsel where trial counsel failed to specifically request and procure the National Counsel on Alcoholism and Drug Dependence staff-activity logs before trial; (2) trial counsel was ineffective for failing to cross-examine the complainant regarding inconsistencies in her trial testimony, and between her trial testimony, preliminary-examination testimony, and what she claimed in the initial police report; (3) counsel appointed to represent the defendant at the evidentiary hearing was ineffective for failing to point out these inconsistencies to the trial court; and (4) newly discovered evidence produced in the civil suit filed on behalf of the complainant, including all the documentary evidence and deposition testimony that resulted from that suit (including, but not necessarily limited to, the staff-activity logs), requires a new trial.

Reversed. In *People v. Bailey*, No. 140654, the Supreme Court preemptorily reversed the Court of Appeals, concluding in a one-paragraph order that the defendant was involved in a single agreement to undertake drug sales, not more than one agreement. Justice Corrigan concurred and wrote separately to explain more fully the Court's reasoning. In particular, Justice Corrigan explained that the lower courts clearly erred in rejecting the defendant's double-jeopardy argument because the record did not establish that the defendant participated in two separate conspiracies. Justice Weaver dissented because she did not think the trial court committed clear error. Justice Young dissented on the ground that the relevant test required examining the totality of the circumstances, which he concluded showed the existence of two separate conspiracies.

Miscellaneous orders. In *King v. Michigan*, No. 140684, the Court granted mini-oral argument on whether to grant the application or to take other preemptory action. And in *People v. Johnson*, No. 140336, the Court directed the Wayne County Prosecuting Attorney to answer the application for leave to appeal.