CRIMINAL LAW

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I. INTRODUCTION

Criminal cases selected for the current *Survey*[1] were considerably less mundane than prior survey periods. Cases in past survey periods could readily be classified by subject, for example, specific crimes, general criminal law principles or defenses. Except for causation, each of the current crop of cases tends to defy such classification. Accordingly, they have been presented alphabetically by subject matter.

II. CAUSATION

In *People v. Rideout*,[2] the defendant was driving his SUV at 2:00 a.m. and hit another car while attempting to turn left.[3] The impact spun

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1. This article includes cases decided from June 1, 2006 through May 31, 2007.
2. 272 Mich. App. 602, 727 N.W.2d 630 (2006).
3. *Id.* at 603, 727 N.W.2d at 632.

the other car around and left it sitting in the center of the road.[4] The driver and his passenger exited the car to speak to the defendant, whose car had landed at the side of the road.[5] The driver became concerned about oncoming traffic being able to see his car in the road because the headlights were out, so he and the passenger went back to the car to try to turn the flashers on.[6] While standing beside the car, another car came along and hit the passenger, killing him.[7]

The defendant was charged with operating a motor vehicle while intoxicated (OWI) causing death.[8] It was determined that at the time of the accident, he had a blood alcohol level of 0.16, or twice the legal limit.[9] He proceeded to trial and was convicted by a jury, and sentenced to three to fifteen years in prison.[10] This appeal followed.[11]

This case presents the issue of causation and whether the defendant's impaired driving was the proximate legal cause of the passenger's death.[12] On appeal, the defendant objected to the extensive instructions given to the jury on factual causation.[13] The instructions indicated that the defendant had to be "a" cause of the accident, but not necessarily "the" only cause of the accident, in order to be convicted.[14] In addition, the defendant argued that the trial court inadequately instructed the jury on the issues of proximate cause and superseding intervening cause.[15] The trial court told the jury that one of several causes "is a substantial factor in causing a death if, but for that cause's contribution, the death would not have occurred, unless the death was an utterly unnatural result of whatever happened."[16] However, the trial court also told the jury that "another cause could be a superseding cause only if it was the sole cause."[17]

The Michigan Court of Appeals found the jury instructions to be an incorrect statement of the law and noted that it appeared from the record that the jury "struggled with the issue of causation" during its deliberations.[18] The court of appeals relied heavily upon *People v. Schaefer*,[19] an important Michigan Supreme Court decision that

4. *Id.*
5. *Id.* at 604, 727 N.W.2d at 632.
6. *Id.*
7. *Id.*
8. *Rideout*, 272 Mich. App. at 603, 727 N.W.2d at 632.
9. *Id.* at 604, 727 N.W.2d at 632.
10. *Id.* at 603, 727 N.W.2d at 632.
11. *Id.*
12. *Id.* at 604-05, 727 N.W.2d at 632.
13. *Id.* at 604-07, 727 N.W.2d at 632-34.
14. *Rideout*, 272 Mich. App. at 607, 727 N.W.2d at 634.
15. *Id.* at 606-08, 727 N.W.2d at 633-34.
16. *Id.* at 607, 727 N.W.2d at 634.
17. *Id.*
18. *Id.* at 607-08 n.13, 727 N.W.2d at 634 n.13.
19. 473 Mich. 418, 703 N.W.2d 774 (2005).

addressed causation under similar facts to the instant case. In *Schaefer* and *People v. Large*,[20] the Michigan Supreme Court clarified the elements of operating a motor vehicle while under the influence of liquor and causing death ("OUIL causing death").[21] Defendant Schaefer was driving on Interstate 75 after consuming three beers.[22] He swerved to exit the freeway, lost control of the car, and his passenger was killed.[23] He was charged with OUIL causing death and manslaughter with a motor vehicle.[24] At trial, a defense expert testified that the exit ramp was not safe at speeds over thirty miles per hour and that as a result he expected that there would have been many accidents at that ramp.[25] The defendant was convicted of OUIL causing death and negligent homicide and appealed.[26] The Michigan Court of Appeals reversed, finding the jury should have been instructed that the defendant's intoxicated driving must be a "substantial cause" of the victim's death, as required by *People v. Lardie*.[27] In the companion case, *People v. Large*, the defendant struck and killed a young girl who rode her bicycle into traffic from a steep driveway.[28] Defendant Large swerved to avoid hitting her, but could not react in time to avoid the accident.[29] Defendant's blood alcohol level was 0.10, and he was driving five miles an hour over the speed limit.[30] Two of the charges against him were manslaughter with a motor vehicle and OUIL causing death.[31] An expert witness testified that the accident was unavoidable, even by a sober driver, because of the girl's sudden appearance into oncoming traffic.[32] The defendant was bound over to circuit court on all of the charges except OUIL causing death and the prosecutor appealed.[33] The court of appeals, relying on *Lardie*, held that the prosecutor "failed to present sufficient evidence to justify a finding that defendant's intoxicated driving was a substantial cause of the

20. 473 Mich. 418, 703 N.W.2d 774 (2005). The separate appeals of *Schaefer* and *Large* were consolidated because they dealt with the same issue.

21. *Id.* at 427-39, 703 N.W.2d at 780-86.

22. *Id.* at 423, 703 N.W.2d at 778.

23. *Id.*

24. *Id.* at 423-24, 703 N.W.2d at 778.

25. *Id.* at 424, 703 N.W.2d at 778 (explaining that the expert was surprised that there had been no other rollover accidents at that exit ramp in over twenty years).

26. *Schaefer*, 473 Mich. at 425, 703 N.W.2d at 779. Negligent homicide is a lesser-included offense of manslaughter with a motor vehicle. *See* MICH. COMP. LAWS ANN. §§ 750.324-750.325 (West 2004); People v. Weeder, 469 Mich. 493, 674 N.W.2d 372 (2004).

27. People v. Schaefer, No. 245175, 2004 Mich. App. LEXIS 831, at *8-9 (Mich. Ct. App. Mar. 25, 2004); People v. Lardie, 452 Mich. 231, 551 N.W.2d 656 (1996).

28. *Schaefer*, 473 Mich. at 425, 703 N.W.2d at 779.

29. *Id.* at 425-26; 703 N.W.2d at 779.

30. *Id.*

31. *Id.* at 426, 703 N.W.2d at 779.

32. *Id.* at 426, 703 N.W.2d at 779-80.

33. *Id.* at 426, 703 N.W.2d at 780.

victim's death . . . ."[34] The court of appeals then affirmed the lower court's decision not to bind Defendant Large over on the charge of OUIL causing death.[35] The Michigan Supreme Court, considering both appeals, reversed and reinstated the charges in both cases, concluding that the *Lardie* decision was incorrect in finding a defendant's "intoxicated driving" must be a substantial cause of the victim's death.[36] The statute does not require the government to prove that a defendant's drinking affected the operation of the automobile.[37] Indeed, the Court observed, the statute requires *no* causal link between a defendant's drinking and the victim's death, but rather, the defendant's operation of the automobile, not the intoxicated driving, must be the cause of the victim's demise.[38] The causation element requires an analysis of whether the defendant's operation of the vehicle was a factual cause of the victim's death.[39] If so, then the defendant's operation of the vehicle must also be a proximate cause.[40] If the victim's death was a direct result of the defendant's driving and there was no intervening event which severed the causal link, then OUIL causing death may be charged.[41] Ordinary negligence by a victim does not sever the causal link because "ordinary negligence is reasonably foreseeable."[42]

Applying the principles of *Schaefer* and *Large* to the instant appeal, the court of appeals reversed and remanded.[43] The court vacated defendant's conviction for OWI causing death due to insufficient evidence that the defendant's actions were a proximate cause of the death.[44] The passenger's death in this case happened after he had reached safety on the side of the road and then chose to go back into the roadway to check on the car.[45] In the court's opinion, this was an intervening cause that was also a superseding cause.[46] The passenger had reached "apparent safety" and then returned to the roadway and placed himself in a more dangerous position.[47] The passenger's decision to reenter the roadway "ended the initial causal chain and started a new one, one for

34. *Schaefer*, 473 Mich. at 426, 703 N.W.2d at 780 (quoting People v. Large, No. 253261, 2004 Mich. App. LEXIS 2097, at *8 (Mich. Ct. App. Aug. 10, 2004)).
35. *Schaefer*, 473 Mich. at 426, 703 N.W.2d at 780.
36. *Id.* at 445-46, 703 N.W.2d at 790.
37. *Id.* at 434, 703 N.W.2d at 784.
38. *Id.* at 446, 703 N.W.2d at 790.
39. *Id.* at 438, 703 N.W.2d at 786.
40. *Id.*
41. *Schaefer*, 473 Mich. at 438, 703 N.W.2d at 786.
42. *Id.* at 438-39, 703 N.W.2d at 786.
43. *Rideout*, 272 Mich. App. at 613, 727 N.W.2d at 637.
44. *Id.* at 612, 727 N.W.2d at 636.
45. *Id.* at 611-12, 727 N.W.2d at 636.
46. *Id.* at 608-12, 727 N.W.2d at 634-36.
47. *Id.* at 611, 727 N.W.2d at 636.

which defendant was not responsible."[48] Moreover, the passenger made a voluntary decision to return to the vehicle, even though it was dangerous.[49] Based on these factors, the court concluded that there was insufficient evidence to establish that the defendant's actions were a proximate cause of the passenger's death.[50] The appropriate remedy, given the jury's verdict, was to direct the trial court to enter a conviction for the lesser offense which the jury also considered, operating while visibly impaired, and to sentence the defendant accordingly.[51]

III. CRIMINAL SEXUAL CONDUCT

The victim in *People v. Waltonen*[52] testified that the defendant was a regular customer at a northern Michigan bar where the victim worked.[53] Over a two week period, four or five days a week, the defendant gave the victim Oxycontin.[54] Gradually, the victim needed greater and greater quantities of the drug in order to get high.[55] Ultimately, the victim became dependent on the drugs.[56] Then the defendant refused to give her drugs or sell her drugs for money and she had to negotiate alternatives. Specifically, the defendant wanted sexual favors in return for continuing to supply the victim with Oxycontin.[57] The victim testified she did not want to have sex with the defendant, but she nonetheless engaged in sexual relations with him in order to acquire more drugs.[58] She testified that it was her choice to have relations with the defendant and that she had relations with him on numerous occasions, in return for which the defendant provided her with drugs.[59]

The defendant was ultimately arrested.[60] At the end of a preliminary examination, the defendant was bound over on four counts of first-degree

48. *Id.* This factor is called the "apparent-safety doctrine." *Rideout*, 272 Mich. App. at 611, 727 N.W.2d at 636. The victim made it to a place of apparent safety, but then chose to place himself back into harm's way. *Id.* The court noted that, if the second accident occurred before the passenger could exit the vehicle and get to the side of the road, then the causal chain would have been intact and the defendant would be held responsible for the death. *Id.*

49. *Id.* at 612, 727 N.W.2d at 636. The court called this the "voluntary human intervention" doctrine. *Id.* at 611, 727 N.W.2d at 636.

50. *Id.* at 612, 727 N.W.2d at 636.

51. *Rideout*, 272 Mich. App. at 613, 727 N.W.2d at 637. The court also noted that the prosecutor can retry the defendant for operating while impaired. *Id.*

52. 272 Mich. App. 678, 728 N.W.2d 881 (2006).

53. *Id.* at 682, 728 N.W.2d 883.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Waltonen*, 272 Mich. App. at 682, 728 N.W.2d at 883-84.

59. *Id.* at 682, 728 N.W.2d at 884.

60. *Id.* at 682-83, 782 N.W.2d at 884.

criminal sexual conduct (CSC1) and other offenses.[61] Regarding the CSC1 charges, the defendant moved to quash the information.[62] The circuit court judge granted the motion on the grounds that the victim had engaged in consensual sex with the defendant, and that consensual sexual relations do not violate the CSC statute.[63] The prosecution appealed.

A person commits first-degree criminal sexual conduct if he or she engages in sexual penetration "under circumstances involving the commission of any other felony."[64] The court noted that the language of the statute was "plain and unambiguous."[65] The statute does not require proof of either force or coercion nor does the statute provide for a defense of consent.[66] The court opined that a defense of consent could only be relevant in the context of the underlying felony.[67] Even then, consent would have to be a legally acceptable defense to the underlying felony itself. If such, and there was consent, then there would be no underlying felony.[68] In the instant case, however, the underlying felony was delivery of a controlled substance, and there is no consent defense to delivery of controlled substances. Accordingly, consent could not be a defense to the alleged violation of the CSC statute, either. The court noted the statute explicitly prohibits all acts of sexual penetration, and that to rule otherwise would, in essence, be holding that the statute applies to nonconsensual penetration rather than all sexual penetration.[69] Thus, the court specifically held that consent is not a defense to CSC1 charges if they are in the context of circumstances involving the commission of another felony.[70]

The court did observe, however, that there must be a "nexus between the underlying felony and the sexual penetration."[71] The court noted that the statute does not require that penetration occur during the commission of the underlying felony, but rather, "the language of the statute is not so limiting."[72] The court noted that the statute requires only that the penetration involve another offense.[73] In the instant case, for example, the delivery of the drug in question usually occurred after the sexual favors had been delivered.[74] The court noted that the acts were nonetheless directly related to the delivery of the controlled substances

61. *Id.*
62. *Id.* at 683, 728 N.W.2d at 884.
63. *Id.*
64. MICH. COMP. LAWS ANN. § 750.520b(1)(c) (West 2004).
65. *Waltonen,* 272 Mich. App. at 689, 728 N.W.2d at 888.
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.* at 690, 728 N.W.2d at 888.
70. *Id.*
71. *Waltonen,* 272 Mich. App. at 691, 728 N.W.2d at 889.
72. *Id.* at 692, 728 N.W.2d at 890.
73. *Id.*
74. *See id.* at 682, 728 N.W.2d at 884.

because the only reason the victim was willing to engage in sexual relations with the defendant was to acquire the drugs.[75] In other words, she was going to receive the drugs only because of the sexual act. Thus, noted the court, the penetration clearly involved the commission of another felony.[76] Therefore, the court concluded that the circuit court had erred in quashing the four criminal sexual conduct counts.[77] The matter was reversed and remanded, with the expectation that the matter would go to trial.[78]

IV. DEFINITION OF FIREARM

Darryl Peals was found guilty by a jury of being a felon in possession of a firearm and felony-firearm.[79] The evidence presented at trial concerned the condition of the gun which was in the defendant's possession. He claimed he had found the gun lying in two pieces, picked up the pieces and put them in his pocket.[80] He later saw that they were damaged and thought the gun was inoperable.[81] A police witness testified that she had examined the gun and it did not function as it was designed to function.[82] It was missing the firing pin and some of its parts. The parts that remained were cracked, the magazine was missing and some springs were missing.[83] The officer concluded that without the firing pin, a bullet could not be fired through the weapon.[84] At the conclusion of the trial, the judge instructed the jury that a handgun need not be currently operable to qualify as a firearm for purposes of the statute.[85] The jury requested further clarification, and was told that a firearm includes any weapon from which a projectile can be propelled but that it need not be currently operable.[86] The defendant did not object to these instructions and a verdict of guilty was returned.[87] The defendant appealed from the court of appeals' refusal to reverse his conviction, and the Michigan Supreme Court granted leave in order to consider whether the weapon which was the basis of the charges qualified as a firearm.[88]

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75. *Id.*
76. *Id.* at 690, 728 N.W.2d at 881.
77. *Waltonen,* 272 Mich. App. at 680-81, 728 N.W.2d at 883.
78. *Id.* at 694, 728 N.W.2d at 890.
79. People v. Peals, 476 Mich. 636, 720 N.W.2d 196 (2006).
80. *Id.* at 638, 720 N.W.2d at 197.
81. *Id.*
82. *Id.* at 639, 720 N.W.2d at 197.
83. *Id.*
84. *Id.* at 638-39, 720 N.W.2d at 197.
85. *Peals,* 476 Mich. at 639, 720 N.W.2d at 197.
86. *Id.* at 639-40, 720 N.W.2d at 198.
87. *Id.*
88. *Id.* at 638, 720 N.W.2d at 197.

The offenses of which the defendant was convicted require proof that he possessed a firearm.[89] A firearm is "a weapon from which a dangerous projectile may be propelled by an explosive, or by gas or air."[90] The sole issue for the Supreme Court to consider was whether the weapon was in such disrepair that it could no longer be said to be a weapon.[91]

The key question in construing the statute[92] is the word "may." Since the statute did not define the word "may," the Court determined it should treat the word as if the legislature intended its ordinary meaning. The Court then turned to a dictionary and found that "may" is defined as expressing possibility, or expressing opportunity or permission, or expressing contingency, or to express wishes or prayers, or to express ability or power.[93] The Court came to the conclusion that these definitions were consistent with the idea that a weapon is a firearm if that is what the designer of the weapon intended.[94] Furthermore, the Court believed the offenses of which the defendant were convicted did not require proof that the firearm was capable of being operated, but rather, only that the weapon be of the type designed to propel a dangerous projectile.[95] The Court noted that the language of the statute did not differentiate between weapons that are operable and weapons that are not operable.[96]

Furthermore, the Court found that the legislature has in several instances defined a dangerous weapon as a weapon which is loaded or unloaded, whether operable or inoperable.[97] The Court considered these statutes to be instructive of what the legislature meant when it used the word "firearm." The Court noted that proof of operability is not required in felony firearm cases.[98] Under the circumstances, the Court concluded that the word "may" simply meant the legislature intended the weapon be considered a firearm if it was designed to propel a dangerous projectile.[99] The Court explicitly held "that there is no operability requirement for the offenses of felony firearm and found in possession of a firearm."[100] Since there was no dispute about the design of the weapon, the Court affirmed

89. *Id.* at 640, 720 N.W.2d at 198.
90. MICH. COMP. LAWS ANN. § 750.222(d) (West 2004).
91. *Peals*, 476 Mich. at 640, 720 N.W.2d at 198.
92. MICH. COMP. LAWS ANN. § 750.222(d).
93. *See* RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY 811 (2d ed. 1997).
94. *Peals*, 476 Mich. at 641, 720 N.W.2d at 198.
95. *Id.* at 641-42, 720 N.W.2d at 198-99.
96. *Id.* at 642, 720 N.W.2d at 199.
97. *Id.* at 643, 720 N.W.2d at 199-200 (citing MICH. COMP. LAWS ANN. §§ 750.110a(1)(b)(i) (West 2004), 600.606(2)(b)(i) (West 1996), 766.14(4)(b)(i) (West 2000)).
98. *See* People v. Thompson, 189 Mich. App. 85, 472 N.W.2d 11 (1991).
99. *Peals*, 476 Mich. at 655-56, 720 N.W.2d at 206.
100. *Id.* at 656, 720 N.W.2d at 206.

the judgment of the court of appeals, which had affirmed the defendant's convictions.[101]

V. FELON IN POSSESSION OF A FIREARM

In *People v. Pierce*,[102] the prosecutor appealed the dismissal of felon in possession of a firearm and possessing a firearm during the commission of a felony that had been lodged against the defendant following his purchase of three firearms from a gun dealer. The defendant had been convicted of breaking and entering in 1975.[103] He applied for a license to purchase the firearms and was granted one by the Muskegon County Sheriff's Department.[104] He was also found eligible to buy long guns from a federally licensed gun dealer.[105] The defendant did not, however, apply to restore his rights to possess a firearm from his local concealed weapons board pursuant to state law.[106] After he was charged by the prosecutor with being a felon in possession, he filed a motion to dismiss arguing that his prior conviction was not a specified felony under state law and thus, "his right to possess the weapons was automatically restored" prior to his arrest.[107]

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101. *Id.*

102. 272 Mich. App. 394, 725 N.W.2d 691 (2006).

103. *Id.* at 397, 725 N.W.2d at 693.

104. *Id.*

105. *Id.*

106. *Id. See* MICH. COMP. LAWS ANN. § 28.424 (West 2004).

107. *Id.* at 397-98, 725 N.W.2d at 693. MICH. COMP. LAWS ANN. § 750.224f (West 2004) provides:

> (1) Except as provided in subsection (2), a person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until the expiration of 3 years after all of the following circumstances exist:
> (a) The person has paid all fines imposed for the violation.
> (b) The person has served all terms of imprisonment imposed for the violation.
> (c) The person has successfully completed all conditions of probation or parole imposed for the violation.
> (2) A person convicted of a specified felony shall not possess, use, transport, sell, purchase, carry, ship, receive or distribute a firearm in this state until all of the following circumstances exist:
> (a) The expiration of 5 years after all of the following circumstances exist:
> (i) The person has paid all fines imposed for the violation.
> (ii) The person has served all terms of imprisonment for the violation.
> (iii) The person has successfully completed all conditions of probation or parole imposed for the violation.
> (b) The person's right to possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm has been restored pursuant to [MCL 28.424]. . . .
> (5) As used in this section, 'felony' means a violation of a law of this state, or of another state, or of the United States that is punishable by imprisonment for 4 years or more, or an attempt to violation such a law.
> (6) As used in subsection (2), 'specified felony' means a felony in which 1 or more of the following circumstances exist:

The trial court agreed with the defendant and granted the motion to dismiss the charges.[108] The prosecutor appealed, arguing that the 1975 conviction was a specified felony under the statute and therefore, the defendant's right to possess a firearm had not been restored.[109]

The Michigan Court of Appeals agreed with the prosecutor and reversed, reinstating the charges against the defendant.[110] Breaking and entering a building is a specified felony, the court noted.[111] "The plain language" of the statute, the court wrote,

> [C]learly and unambiguously includes breaking and entering as a specified felony, because, by its nature, breaking and entering involves the use of physical force, or the substantial risk that physical force may be used, against the property of another in the commission of the offense.[112]

Thus, the court concluded, the trial court erred in granting defendant's motion to dismiss the felon in possession charges.

The defendant also argued that the prosecution itself was barred by the doctrine of entrapment by estoppel.[113] He based this assertion upon the fact that he applied for, and was granted, licenses to purchase handguns and authorization to purchase firearms from government agencies.[114] The court of appeals noted that the doctrine of entrapment by estoppel requires a defendant to establish:

> (1) that a government official advised the defendant that certain illegal conduct was legal, (2) that the defendant actually relied on the government official's statements, (3) that the defendant's

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> (i) An element of that felony is the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or the property of another may be used in the course of committing the offense.
> (ii) An element of that felony is the unlawful manufacture, possession, importation, exportation, distribution, or dispensing of a controlled substance.
> (iii) An element of that felony is the unlawful possession or distribution of a firearm.
> (iv) An element of that felony is the unlawful use of an explosive.
> (v) The felony is burglary of an occupied dwelling, or breaking and entering an occupied dwelling, or arson.

MICH. COMP. LAWS ANN. § 750.224f.

108. *Pierce,* 272 Mich. App. at 396, 725 N.W.2d at 692.

109. *Id.* at 398, 725 N.W.2d at 693-94.

110. *Id.* at 400-01, 725 N.W.2d at 695.

111. *Id.* at 398, 725 N.W.2d at 695. *See* Tuggle v. Dept. of State Police, 269 Mich. App. 657, 712 N.W.2d 750 (2005).

112. *Id.* at 398, 725 N.W.2d at 694 (citing *Tuggle,* 269 Mich. App. at 666-67, 712 N.W.2d at 755).

113. *Pierce,* 272 Mich. App. at 400-01, 725 N.W.2d at 695.

114. *Id.* at 399, 725 N.W.2d at 694.

> reliance was reasonable and in good faith given the identity of the government official, the point of law represented, and the substance of the official's statements, and (4) that, given the defendant's reliance, prosecution would be unfair.[115]

The court of appeals gave short shrift to this argument, noting that this defense requires an evidentiary hearing by the trial court, at which the defendant has the burden of proof by a preponderance of the evidence.[116] In the instant case, the trial court only held an evidentiary hearing on the motion to dismiss, not the estoppel claim.[117] Therefore, the appellate court declined to rule on this issue and remanded the case to the trial court for reinstatement of the charges and for consideration of defendant's entrapment claim.[118]

VI. LESSER INCLUDED OFFENSES

In *People v. Martin*, [119] the defendants appealed their convictions based upon their participation in the operation of Legg's Lounge, an adult entertainment establishment. Three of the defendants were convicted of operating a house of ill fame, a place frequented for the purpose of prostitution.[120] Other defendants were also convicted, in a separate trial, of knowingly conducting or participating in the affairs of that enterprise through a pattern of racketeering.[121] All defendants were placed on probation or sentenced to community service. Defendant Billy Martin and two others argued on appeal that the trial court committed error when it instructed the jury that keeping a house of prostitution is a necessarily included lesser offense of racketeering.[122]

The prosecution claimed the defendants kept a house of prostitution as a predicate offense -- an offense which must be proven in order to establish a violation of the racketeering statute. However, the defendants were not separately charged with that particular offense. Nonetheless, prior to closing argument, the prosecution invited the court to instruct the jury that the defendants could be convicted of keeping a house of prostitution as a lesser included offense of racketeering, and the judge gave that instruction over the objection of the defendants.[123] The

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115. *Id.* at 399-400, 725 N.W.2d at 694 (citing People v. Woods, 241 Mich. App. 545, 616 N.W. 2d 211 (2000)).

116. *Id.* at 400, 725 N.W. 2d at 695.

117. *Id.*

118. *Id.* at 401, 725 N.W.2d at 695.

119. 271 Mich. App. 280, 721 N.W.2d 815 (2006).

120. *See* MICH. COMP. LAWS ANN. § 750.452 (West 2004)(Keeping an establishment used for prostitution).

121. *See* MICH. COMP. LAWS ANN. § 750.159i(1) (West 2004) (Racketeering activity).

122. *Martin*, 271 Mich. App. at 286, 721 N.W. 2d at 824.

123. *Id.* at 287, 721 N.W. 2d at 825.

defendants were found not guilty of the racketeering charge, but guilty of keeping a house of prostitution.

Juries may be instructed on offenses which have not been charged if the uncharged offense is an inferior offense to that which has been charged.[124] Only necessarily included offenses may be considered as inferior offenses.[125]

The Michigan Court of Appeals found that the legislature considered predicate offenses as separate rather than lesser included offenses.[126] The court specifically noted the penalty for racketeering is to be considered separately and distinctly from the punishment for predicate offenses.[127] Indeed, the predicate offenses may be punished both separately and cumulatively from the racketeering offense.[128] The corollary, of course, is that one cannot be convicted of both a greater and a lesser included offense, at least if the lesser offense is a necessarily included offense. Therefore, the court of appeals concluded, the trial court was in error when it instructed the jury that the defendants could be found guilty of an uncharged offense - keeping a house of prostitution - as a necessarily included lesser offense of racketeering.[129] Accordingly, the convictions of these three defendants were reversed.

VII. MAINTAINING A DRUG VEHICLE

Keith Thompson[130] was convicted, after a jury trial, of maintaining a drug vehicle.[131] The court of appeals reversed, reasoning there was insufficient evidence to support the conviction.[132] That court reasoned that maintaining a drug vehicle conviction required authority or control

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124. *Id.* at 287-89, 721 N.W.2d at 825-26. The court relied upon People v. Cornell, 466 Mich. 335, 646 N.W.2d 127 (2002).

125. *Id.* at 289, 721 N.W.2d at 826.

126. *Id.* at 295, 721 N.W.2d at 829.

127. *Id.* The court noted its conclusion was consistent with federal authority which has considered the same issue in the context of the federal racketeering statute.

128. *Martin,* 271 Mich. App. at 295, 721 N.W. 2d at 829.

129. *Id.* at 296, 721 N.W.2d at 830. Another defendant, also named Martin, was convicted of racketeering but acquitted of the predicate offense. The court of appeals considered this to be harmless error because the defendant was not convicted of the predicate offense. *Id.* at 327, 721 N.W.2d at 846.

130. People v. Thompson, 477 Mich. 146, 730 N.W.2d 708 (2007).

131. *Id.* at 150, 730 N.W.2d at 710. In addition, the defendant was also convicted of delivery of a small amount of cocaine. Maintaining a vehicle in relation to controlled substances is prohibited by MCL section 333.7405(1)(d), which provides in relevant part that a person:

> Shall not knowingly keep or maintain a store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article.

MICH. COMP. LAWS ANN. § 333.7405(1)(d) (West 2004).

132. *Thompson,* 477 Mich. at 153, 730 N.W.2d at 711.

over the vehicle in question for an appreciable period of time.[133] The Michigan Supreme Court granted the prosecutor leave to appeal in order to decide "whether a defendant must 'keep or maintain' a vehicle used for the purpose of selling a controlled substance 'continuously for an appreciable period of time' . . . ."[134] for a conviction to be sustained.

The Michigan Supreme Court began its analysis of the statute by noting that it had not previously been called upon to construe this particular statute.[135] The Court next noted that the phrase "keep or maintain" was not defined within the statute.[136] The Court then turned to a dictionary and discovered that "keep" and "maintain" are synonyms.[137] The Court also noted that "keep" and "maintain" suggest continuity.[138] Thus, the Court concluded, some continuity is an element of the phrase "keep or maintain," and it was impossible to avoid an element of continuity in any definition of those words.[139]

Previously, the Michigan Supreme Court had held that a single act of prostitution did not constitute keeping and maintaining a house of ill fame.[140] Similarly, opined the Court, one cannot "keep or maintain" a drug vehicle by an isolated act of selling drugs from the vehicle.[141] Rather, there must be some continuity that can be found by actual observation of repeated transactions.[142] Accordingly, the Court vacated the judgment of the court of appeals and returned the case to the court of appeals for determination of whether there was sufficient evidence to support the defendant's conviction by applying the decision in the instant case.[143]

VIII. MARIJUANA METABOLITES

In *People v. Derror*,[144] the Michigan Supreme Court considered the consolidated appeals of Delores Derror and Dennis Curts in order to decide whether 11– carboxy – THC (hereinafter 11-THC), a byproduct of metabolism created as the body assimilates THC, the active ingredient of marijuana, is a scheduled 1 controlled substance.[145]

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133. *Id.* at 150, 730 N.W.2d at 711.
134. *Id.*
135. *Id.* at 152, 730 N.W.2d at 711.
136. *Id.* at 153, 730 N.W.2d at 711.
137. *Id.* at 153, 730 N.W.2d at 712.
138. *Thompson*, 477 Mich. at 154, 730 N.W.2d at 712.
139. *Id.* at 154, 730 N.W.2d at 713.
140. *Id.* at 154-55, 730 N.W.2d at 713 (citing People v. Gastro, 75 Mich. 127, 42 N.W. 937 (1889)).
141. *Id.* at 155, 730 N.W.2d at 713.
142. *Id.* at 155, 730 N.W.2d at 713.
143. *Id.* at 158-59, 730 N.W.2d at 715.
144. 475 Mich. 316, 715 N.W.2d 822 (2006).
145. Marijuana is a schedule 1 controlled substance under MCL section 333.7212.

Delores Derror was in an automobile accident resulting in the death of a passenger in the other car. Blood samples taken from the defendant indicated the presence of 11-THC. She was subsequently charged with driving a motor vehicle with a schedule 1 controlled substance in her body.[146]

Dennis Kurts was stopped while driving his motor vehicle in an erratic fashion.[147] The opinion does not state whether Kurts was arrested, but it does state a blood sample was taken, and tests of the blood sample indicated the presence of 11-THC.[148] Kurts, too, was charged with operating a motor vehicle while a schedule 1 controlled substance was present in his body.[149]

In both cases, the trial courts held evidentiary hearings, and both courts determined that the legislature had not intended to include 11-THC as a schedule 1 controlled substance.[150] Prosecutors in both cases appealed to the court of appeals, and that court affirmed the lower court rulings that 11-THC is not a schedule 1 controlled substance. Leave was granted for a prosecutorial appeal to the Supreme Court for determination of whether 11-THC is a schedule 1 controlled substance.[151]

The Michigan Supreme Court took a syllogistic approach to resolving the issue. The Court noted that the statute, MCL section 257.625(8) prohibits operating a motor vehicle when a controlled substance is present in the body.[152] The Court next noted that MCL section 333.7212(1)(c) lists marijuana as a schedule 1 controlled substance.[153] And, according to MCL section 333.7106(3), marijuana means all parts of the marijuana plant, including derivatives.[154] The Court further noted that 11-THC is a metabolite of THC, which is, as previously noted, the active ingredient in marijuana.[155]

The Court then specifically held that the term "derivative" encompasses metabolites.[156] The court took notice that no Michigan statute requires a substance to have specific pharmacological properties in order to be included as a schedule 1 controlled substance.[157] The Court agreed 11-THC has no effect on the human body, but noted that the

146. *Derror*, 475 Mich. at 320-21, 715 N.W.2d at 825. Operating a motor vehicle with the presence of a schedule 1 controlled substance in one's body is a violation of MCL sections 257.625(4), 257.625(5), and 257.625(8).
147. *Id.* at 321, 715 N.W.2d at 825.
148. *Id.*
149. *Id.*
150. *Id.* at 322, 715 N.W.2d at 826.
151. *Id.* at 323, 715 N.W.2d at 827.
152. *Derror*, 475 Mich. at 324, 715 N.W.2d at 827.
153. *Id.*
154. *Id.* at 324-25, 715 N.W.2d at 827.
155. *Id.* at 325-26, 715 N.W.2d at 828.
156. *Id.* at 326. 715 N.W.2d at 828.
157. *Id.* at 329, 715 N.W.2d at 830.

statute does not require that the defendant be impaired while driving.[158] On the contrary, the statute punishes all who operate a motor vehicle with any amount of a schedule 1 substance in the body.[159] Marijuana is a schedule 1 controlled substance and the legislature included the term "derivative" within the definition of marijuana, therefore, the presence of 11-THC in the body while driving constitutes criminal activity.[160] The Court specifically held that 11-THC is a schedule 1 controlled substance and reversed the decisions of the court of appeals to the contrary.[161] Both cases were remanded to the trial courts for further proceedings.[162]

IX. RESTITUTION

In *People v. Gubachy*,[163] the defendant appealed an order of restitution imposed following his guilty plea to charges stemming from his former employment at a plumbing company.[164] After he was terminated from his job, he and another individual went back to the employer's building and drove three trucks away without permission.[165] They removed the tools and equipment from one truck and then returned it.[166] The police found the other two trucks.[167] The owner of the company stated that the value of the property taken was approximately $7900.[168] He also claimed $2700 in expenses due to the need to conduct an inventory and replace the missing tools.[169] The trial court entered a restitution order of $10,098.93, and the defendant appealed.[170]

The Michigan Court of Appeals affirmed.[171] The court gave little credence to the defendant's assertion that there was insufficient evidence to support the restitution order.[172] Not only do "crime victims have a constitutional right to restitution," the court noted, they "have a statutory right to restitution under the Crime Victim's Rights Act ...."[173] The government must prove the amount of loss by a preponderance of the evidence, and a victim is entitled to be reimbursed for "those losses that

158. *Derror*, 475 Mich. at 330, 715 N.W.2d at 830-31.
159. *Id.* at 329-30, 715 N.W.2d at 830.
160. *Id.*
161. *Id.* at 331, 715 N.W.2d at 831.
162. *Id.*
163. 272 Mich. App. 706, 728 N.W.2d 891 (2006).
164. *Id.* at 708, 728 N.W.2d at 892.
165. *Id.* at 707, 728 N.W.2d at 892.
166. *Id.*
167. *Id.*
168. *Id.*
169. *Gubachy*, 272 Mich. App. at 707, 728 N.W.2d at 892.
170. *Id.*
171. *Id.* at 708, 728 N.W.2d at 892.
172. *Id.*
173. *Id.* (citing MICH. COMP. LAWS ANN. § 780.751 (West 2007)).

are easily ascertained and are a direct result of a defendant's criminal conduct."[174]

In the instant case, the court noted, the defendant's own admissions established the theft of three trucks and $1400 worth of supplies contained therein.[175] Although he denied stealing tools, he acknowledged that his codefendant took tools and placed them in the defendant's storage locker, under defendant's control.[176] The trucks were fully equipped prior to the theft, and anything missing after the theft was directly related to the defendant's crime.[177] Moreover, the victim had invoices to substantiate the cost and value of the missing tools and supplies, and the trial court did not hold the defendant responsible for items the victim could not prove had been taken.[178] As the goal of restitution is to try to make a victim whole again, the court noted, the labor costs expended by the victim to taking inventory and reequip the trucks was also recoverable and reasonable.[179]

X. SEXUAL OFFENDER'S REGISTRATION ACT

Thomas Golba was charged with possession of child sexually abusive material.[180] He was convicted by a jury on one count of unauthorized access to computers,[181] but the jury was unable to reach a verdict on the child sexually abusive material charge.[182] Accordingly, the trial court declared a mistrial.[183] The judge sentenced the defendant to a short jail term, and then a period of probation.[184] The defendant was also ordered to register as a sex offender under the Sex Offender's Registration Act (SORA).[185] The defendant appealed, arguing that he was convicted of a crime which does not require any proof of sexual misconduct and that, therefore, the court was in error when it ordered him to register under the SORA.[186]

The SORA requires an individual convicted of any of SORA's listed offenses to be registered as a sex offender.[187] The listed offenses include a catch-all provision, which itself includes any violation of the law "that

174. *Id* at 708, 728 N.W.2d at 892-93. *See also* People v. Orweller, 197 Mich. App. 136, 494 N.W.2d 753 (1992).
175. *Gubachy*, 272 Mich. App. at 709, 728 N.W.2d at 893.
176. *Id.*
177. *Id.*
178. *Id.*
179. *Id.* at 713, 728 N.W.2d at 895.
180. People v. Golba, 273 Mich. App. 603, 792 N.W.2d 916 (2007).
181. *See* MICH. COMP. LAWS ANN. § 752.795 (West 2007).
182. *Golba*, 273 Mich. App. at 606, 792 N.W.2d at 920.
183. *Id.*
184. *Id.* at 605, 792 N.W.2d at 919.
185. *Id. See* MICH. COMP. LAWS ANN. §§ 28.721-28.736 (West 2007).
186. *Id.* at 605, 792 N.W.2d at 919.
187. MICH. COMP. LAWS ANN. § 28.723(a)(1) (West 2008).

by its nature constitutes a sexual offense against an individual who is less than 18 years of age."[188]

The court of appeals noted that it has previously found that the SORA catchall provision requires three conditions: conviction of a state law or municipal ordinance violation; the nature of the violation must constitute a sexual offense; and the victim must be under the age of eighteen.[189]

The court concluded that there was no doubt that the defendant had been convicted of a state law violation.[190] The second element is whether the conduct by its nature constitutes a sexual offense.[191] The court noted that misuse of a computer may indeed be nonsexual in nature.[192] Whether the offense is also, by its nature, a sexual offense within the meaning of the statute depends upon the nature of the defendant's conduct underlying the conviction.[193] The Michigan Code of Criminal Procedure requires sentencing courts to determine if the offense constituted a sexual offense against an individual under the age of eighteen.[194] Furthermore, the Code requires courts to make that determination on the record and to include that determination in the judgment of sentence.[195] The court noted from the foregoing implication that there will sometimes be a necessity for a finding of fact rather than simply reading the statute in question.[196] Thus, it is the underlying factual basis for the conviction which is determinative rather than the language of a particular statute.[197]

The court of appeals concluded the evidence was overwhelming that the defendant had unlawfully misused the computer in question.[198] The court also noted that the victim of the misuse of the computer was under the age of eighteen.[199] Specifically, the defendant misused the computer by sending sexually explicit email to a 16-year-old female and soliciting sex from her.[200] Thus, according to the court, the defendant could be found to have committed an offense which was by its nature sexual and

188. MICH. COMP. LAWS ANN. § 28.722(e)(xi) (West 2008).
189. *Golba*, 273 Mich. App. at 607, 792 N.W.2d at 920 (citing People v. Meyers, 250 Mich. App. 637, 647, 649 N.W.2d 123, 129 (2002)).
190. *Id.*
191. *Id.*
192. *Id.* at 610, 792 N.W.2d at 922.
193. *Id.* at 611, 792 N.W.2d at 922.
194. *Id. See* MICH. COMP. LAWS ANN. § 769.1(13) (West 2007).
195. *Golba*, 273 Mich. App. at 611, 792 N.W.2d at 922.
196. *Id.*
197. *Id.*
198. *Id.* at 611-12, 792 N.W.2d at 922-23.
199. *Id.*
200. *Id.*

against a person under the age of eighteen.[201] The decision of the trial court was therefore affirmed.[202]

XI. TERRORISM THREATS

The defendant in *People v. Osantowski*[203] was convicted by a jury of making a threat of terrorism. The defendant appealed, contending that the trial court erred by refusing to provide the jury with a proper definition of "threat" and further contending there was insufficient evidence to convict him of making a terrorist threat.[204]

Defendant's troubles with the law arose from his participation in electronic chat room conversations.[205] In the course of his chatting, the defendant expressed his feelings of hate and his plans to inflict death and terror upon his family.[206] He also stated he intended to treat other individuals the same way.[207] He made references to a rampage and being on the brink of mass murder. He bragged about the weapons in his possession.[208] He also expressed an intention to attack a deputy sheriff at his school.[209] One of the other participants in the chat room was the daughter of a police officer, and she told her father about the electronic conversations.[210] The father notified local police of the information contained in the messages electronically posted in the chat room.[211] The defendant's home was searched and numerous weapons were found.[212] The defendant claimed in interviews with the police that his chat room comments were nothing more than expressions of anger and were not meant as threats.[213] Ultimately, he was charged with the crimes for which he was convicted.

The jury, during the course of deliberations, asked the trial judge for a definition of the word threat.[214] The court, using a standard dictionary definition, informed the jury that "[a] threat would be an expression of an

201. *Golba*, 273 Mich. App. at 613, 792 N.W.2d at 923.
202. *Id.* at 621, 792 N.W.2d at 927.
203. 274 Mich. App. 593, 736 N.W.2d 289 (2007). *See* MICH. COMP. LAWS ANN. § 750.543h (West 2007). The defendant was also convicted of using a computer in the commission of a crime in violation of MCL section 752.796 and MCL section 752.797(3)(f) and possessing a firearm during the commission of a felony in violation of MCL section 750.227b. *Id.* at 595, 736 N.W.2d at 294.
204. *Id.* at 611-12, 736 N.W.2d at 302-03.
205. *Id.* at 595, 736 N.W.2d at 294.
206. *Id.*
207. *Id.* at 596, 736 N.W.2d at 294.
208. *Osantowski*, 274 Mich. App. at 597, 736 N.W.2d at 295.
209. *Id.* at 597-98, 736 N.W.2d at 295.
210. *Id.* at 599, 736 N.W.2d at 296.
211. *Id.*
212. *Id.*
213. *Id.* at 612, 736 N.W.2d at 302.
214. *Osantowski*, 274 Mich. App. at 612, 736 N.W.2d at 302.

intention to inflict something harmful."[215] This definition was given over defense objection.[216] The court of appeals opined that when a statute does not define terms used in the statute, it is customary to look to a dictionary for a definition.[217] The court believed that the trial court instruction on threat as "an intention to inflict something harmful" was consistent with the definition of a true threat.[218] And, according to the court, a true threat encompasses statements expressing an intent to commit an act of unlawful violence either to an individual or to a group of individuals.[219] Accordingly, the court found there was no error in the jury instructions.[220]

The defendant also contended that there was insufficient evidence to convict him of making a terroristic threat.[221] An ambiguous statement, the court noted, can constitute a threat.[222] The court emphasized, however, that defendant's messages expressing an intent to kill his family, take guns to school to exact vengeance, and kill a specific police officer, were not ambiguous.[223] Thus, the court was convinced there was ample evidence, given the explicitness of the defendant's statements, to convict him of making a threat to commit an act of terrorism.[224] The conviction was affirmed.[225]

XII. UNANIMITY INSTRUCTION

Billy Ray Martin and a co-defendant were convicted of participating in a criminal enterprise through a pattern of racketeering activity.[226] On appeal, Martin contended that the trial court erred by failing to give the jury an enhanced unanimity instruction.[227]

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215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.* at 612, 736 N.W.2d at 302-03.

219. *Id.* at 612, 736 N.W.2d at 303.

220. *Osantowski*, 274 Mich. App. at 613, 736 N.W.2d at 303. The court relied upon United States v. Fulmer, 108 F.3d 1486 (1997).

221. *Id.* at 613-14, 736 N.W.2d at 303-04.

222. *Id.* at 613, 736 N.W.2d at 303. The defendant also challenged the constitutionality of the statute, rulings on the admissibility of evidence, whether he had received proper *Miranda* warnings, and the scope of the search warrant. *Id.* These issues were all resolved against the defendant. *Id.*

223. *Id.*

224. *Osantowski*, 274 Mich. App. at 613, 736 N.W.2d at 303.

225. *Id.* at 621, 736 N.W.2d at 307.

226. *Martin*, 271 Mich. App. 280, 721 N.W.2d 815. *See* MICH. COMP. LAWS ANN. § 750.159i(1) (West 2004) (Participating in a criminal enterprise by a pattern of racketeering).

227. *Id.* at 337, 721 N.W.2d at 851. The court noted the defendants' other complaints concerning the jury instructions were confusing and unclear, and were deemed therefore to have been abandoned.

A defendant in a criminal case is entitled to a unanimous verdict, and the trial court must instruct the jury on the requirement of unanimity.[228] In the instant case, a general unanimity instruction was given.[229] This is normally adequate. A specific unanimity instruction, however, must be given when the prosecution offers evidence of alternative acts said to have been committed by the defendant, at least if the alternative acts can be considered distinct.[230] In the instant case, the prosecution submitted evidence showing defendant Martin assisted in the operation of an adult entertainment establishment known as Legg's Lounge, and thus facilitated prostitution.[231]

The defendant contended that any prostitution that occurred was perpetrated without his knowledge.[232] The defendant did not, however, contend such activity was anything other than prostitution.[233] The court found that the record did not support a claim that distinct pieces of evidence had been offered.[234] Thus, according to the court of appeals, there was no requirement that the trial court give the jury an instruction regarding specific unanimity.[235] Under the circumstances, the court found no error in the instructions which would warrant reversal of the conviction.[236]

XIII. YOUTH TRAINING ACT

John Giovannini[237] was involved in conduct which resulted in multiple home invasion charges being filed against him.[238] He was seventeen years old at the time.[239] He tried to plead guilty to all the charges under the Youth Training Act (hereinafter YTA).[240] The prosecution objected on the grounds that the YTA is available only if there is no more than one offense involved.[241] The trial court agreed with the prosecution's position, but the court also expressly stated that youthful trainee status would have been granted if the court were permitted to do so.[242] The defendant appealed, contending he was

228. *Id.* at 338, 721 N.W.2d at 852.
229. *Id.*
230. *Id.*
231. *Id.*
232. *Martin*, 271 Mich. App. at 339, 721 N.W.2d at 852.
233. *Id.*
234. *Id.*
235. *Id.*
236. *Id.*
237. People v. Giovannini, 271 Mich. App. 409, 722 N.W.2d 237 (2006).
238. *Id.* at 410, 722 N.W.2d at 239.
239. *Id.* at 410-11, 722 N.W.2d at 239.
240. *Id.*
241. *Id.* at 411, 722 N.W.2d at 239.
242. *Id.*

eligible for YTA consideration even though he was convicted of two criminal offenses.[243]

The YTA is a statute which permits a youth between the ages of 17 and 21 to avoid a criminal record.[244] The YTA permits the possibility of rehabilitation prior to conviction.[245]

At the time of the sentencing, the YTA, in two different places, made reference to a defendant's criminal offense.[246] The language of the statute is singular.[247] Thus, the question is whether the singular language precludes disposition under the YTA when more than one offense is involved.[248]

The Michigan Court of Appeals had previously held that the YTA is available to a defendant who pleads guilty to more than one offense.[249] In that case, the defendant on appeal to the Supreme Court, was not eligible for YTA consideration because he had pled nolo contendere rather than guilty.[250] At that time, the Supreme Court considered it unnecessary to resolve this issue, and instead simply vacated that portion of the decision of the court of appeals.[251]

In the instant case, the court of appeals found neither of the earlier cases were of any precedential value because the opinions had been vacated by the Supreme Court.[252] The Supreme Court opinion did not express agreement or disagreement with the analysis of the Michigan Court of Appeals, but rather vacated the opinion because the matter had been resolved on other grounds.[253] The court of appeals then reviewed the original decision, and concluded it had been soundly written.[254] The court noted that the legislature has vindicated the concept that the singular, in a statute, extends to and embraces the plural, and that the

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243. *Giovannini*, 271 Mich. App. at 410, 722 N.W.2d at 238.

244. People v. Bobek, 217 Mich. App. 524, 528-29, 553 N.W.2d 18, 20-21 (1996). *See* MICH. COMP. LAWS ANN. § 762.11 (West Supp. 2007) (amended 2004).

245. People v. Perkins, 107 Mich. App. 440, 444, 309 N.W.2d 634, 636-37 (1981).

246. *Giovannini*, 271 Mich. App. at 412, 722 N.W.2d at 239-40.

247. MCL section 762.11 provides in relevant part:

> If an individual pleads guilty to a charge of a criminal offense, other than a felony for which the maximum punishment is life imprisonment, a major controlled substance offense, or a traffic offense, committed on or after the individual's seventeenth birthday but before his or her twenty-first birthday, the court of record having jurisdiction of the criminal offense may, without entering a judgment of conviction and with the consent of that individual, consider and assign that individual to the status of youthful trainee . . . .

MICH. COMP. LAWS. ANN. § 762.11 (West Supp. 2007) (amended 2004).

248. *Giovannini*, 271 Mich. App. at 412, 722 N.W.2d at 240.

249. *Id.* at 413, 722 N.W.2d at 240 (citing People v. Harns, 227 Mich. App. 573, 578, 576 N.W.2d 700, 702 (1998)).

250. People v. Harns, 459 Mich. 895, 587 N.W.2d 504 (1998).

251. *Giovannini*, 271 Mich. App. at 413, 722 N.W.2d at 240.

252. *Id.* at 413-14, 722 N.W.2d at 240.

253. *Id.* at 414, 722 N.W.2d at 240.

254. *Id.* at 415-17, 722 N.W.2d at 241-42.

plural word in a statute may be applied to the singular.[255] Accordingly, a criminal offense can also mean criminal offenses.

Additionally, the court noted that if the legislature had intended to exclude defendants with more than one charge pending against them, the legislature could have expressly done so.[256] The court found multiple cases in which YTA status had been accorded even though there was more than one offense attributed to the defendant.[257] The legislature's continued silence indicated to the court that the legislature was satisfied with the court's interpretation of the YTA.[258] Finally, the court concluded, the limitation being urged by the prosecution was not in keeping with the discretion afforded to trial courts as they attempt to apply the YTA.[259] The decision of the trial court was reversed and the case remanded for proceedings consistent with the court's opinion, specifically, to rule on the defendant's request for placement under the YTA.[260]

255. *Id.* at 415, 722 N.W.2d at 240.
256. *Id.*
257. *Giovannini*, 271 Mich. App. at 415-16, 722 N.W.2d at 241.
258. *Id.* at 416, 722 N.W.2d at 241.
259. *Id.* at 416, 722 N.W.2d at 242.
260. *Id.* at 417, 722 N.W.2d at 242.