

**STATE OF MICHIGAN
IN THE SUPREME COURT**
Appeal from the Michigan Court of Appeals
Swartz, P. J., Redford and Feeney, J.J.

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

Supreme Court No. 167895

Court of Appeals No. 366148

DANIELLE HEAVEN-LEAH HESS,

Montcalm Circuit e No. 22-029309-AR

Defendant-Appellant.

**BRIEF ON APPEAL OF
PEOPLE OF THE STATE OF MICHIGAN
ORAL ARGUMENT REQUESTED**

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MCL 333.27955(1)

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STATEMENT OF JURISDICTION

The Court has discretionary jurisdiction to review a decision of the Court of Appeals. MCR 7,303(B)(1). On 25 April 2025, this Court granted leave to appeal.

QUESTIONS PRESENTED

1. Whether MCL 771.3(1)(a)—which makes it a mandatory condition of probation that “the probationer shall not violate any criminal law of the United States”—requires trial courts to bar probationers from engaging in marijuana use that is otherwise permitted by the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq.*

People’s Answer: Yes. Because marijuana remains a Schedule I controlled substance under the federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, use of marijuana constitutes a violation of federal criminal law. The plain text of MCL 771.3(1)(a) therefore mandates abstention. Nothing in the MRTMA repeals or limits this statutory requirement. Instead, the MMRTA gives express deference to federal law.

Defendant’s Answer: No. The MRTMA authorizes adult recreational use under Michigan law and forbids any state-imposed penalty for conduct it permits; incorporating federal law into probation conditions would frustrate legislative intent.

2. If not, whether and under what circumstances a trial court may prohibit MRTMA-compliant marijuana use as a discretionary condition of probation under MCL 771.3(3).

People's Answer: The privilege of marijuana use under the MRTMA is alienable. Under MCL 771.4(1), probation is contractual in nature: the probationer voluntarily accepts obligations and forgoes privileges in exchange for conditional liberty. A court may, in its discretion, restrict MRTMA-compliant use when reasonably related to rehabilitation or public safety.

Defendant's Answer: No. Any restriction on MRTMA-compliant use constitutes a state penalty for conduct the Legislature expressly protected and is therefore precluded by MCL 333.27955(1).

INTRODUCTION

In 2018, Michigan voters passed Initiated Law 1, the Michigan Recreational Marihuana Act (“MMRTA”) by “THE COALITION TO REGULATE MARIJUANA LIKE ALCOHOL.”¹ The initiated law authorized the personal possession and use of marijuana by persons 21 years and older and controlled the commercial production and distribution of marijuana. The intent of the proposed law was touted as regulating marijuana like alcohol.²

The probation act and the MRTMA occupy distinct spheres and can be harmonized without implied repeal. The Legislature’s command in MCL 771.3(1)(a)—that probationers “shall not violate any criminal law of the United States”—is unambiguous. Because marijuana remains unlawful under the federal Controlled Substances Act, a trial court acts within statutory mandate when it prohibits a probationer from using marijuana, even if that conduct is otherwise permissible under state law. The MRTMA neither repeals nor modifies MCL 771.3(1)(a) and contains no language

¹ EXHIBIT 1.

² “The face of the petitions also reflected that they were “Paid for with regulated funds by Coalition to Regulate Marijuana like Alcohol.” *People v Perry*, 338 Mich App 363, 369 (2012). “We can fathom no reason why marijuana should not also be treated similarly to alcohol under the MTRMA.” *People v Lopez-Hernandez*, Court of Appeals Docket No.: 367731, decided 11 July 2024.

exempting probationers from compliance with federal criminal law. The Court's analysis should end here.

Even, *arguendo*, the Court determines that abstention is not mandatory under MCL 771.3(1)(a), the prohibition remains valid under MCL 771.3(3) as a discretionary condition of probation. Probation is a statutory privilege granted in lieu of incarceration, not an entitlement. Under MCL 771.4(1), a probation order is contractual: the probationer accepts its conditions, undertakes obligations, and foregoes privileges in exchange for leniency. The MRTMA explicitly characterizes marijuana use as a "privilege," not an inalienable right. Defendant voluntarily accepted the condition barring marijuana use as part of her probation bargain, violated it, and now seeks to escape the consequence of that voluntary undertaking. The law does not permit her to repudiate the bargain after reaping its benefits. The Court of Appeals correctly upheld the trial court's authority to impose and enforce this condition. The decision should be affirmed.

STATEMENT OF FACTS AND PROCEEDINGS

Defendant was convicted upon her plea of guilty to Third-Degree Retail Fraud in the 64-B District Court and sentenced to probation under MCL 771.3, under the Holmes Youthful Trainee Act.³

At sentencing, pursuant to MCL 771.4(1)—which requires the agreement of a probationer to probationary terms—Defendant subscribed to an order of probation that expressly mandated compliance with the federal criminal law, including by implication the federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.* The order defendant acknowledged and signed prohibited her from possessing or using marijuana in any form, and to submit to regular drug testing.⁴

³ (HYTA) MCL 762.11. On 17 August 2021, defendant, pursuant to a plea agreement, pleaded guilty to the lesser charge of third-degree retail fraud, punishable by up to 93 days in jail and/or a \$500.00 fine. MCL 750.356d(4). In exchange for her plea, the original charge was to be dismissed at time of sentencing. In addition, the People agreed to no up-front jail conditioned on her successful completion of probation. (Plea Hearing, 08-17-2021, page 4. “PH, 4”) [EXHIBIT 1] The district court informed the defendant that it was not bound by the sentencing agreement, and if the court decided that jail was appropriate, she would have the right to withdraw her plea. (PH,4)[EXHIBIT 1]

The charges stem from a 29 July 2020 incident where Defendant was cited with second-degree retail fraud after she and a co-defendant allegedly stole \$960.00 of clothing and four beverage tumblers from the Greenville Meijer, contrary to MCL 750.356d(1)(C).³ Second-degree retail fraud is a misdemeanor punishable by up to one-year in jail and a fine of not more than \$2,000. MCL 750.356(1). Ms. Hess was not arrested in favor of being given an appearance ticket to appear in court.

⁴ EXHIBIT 2

On two separate occasions while on probation, Ms. Hess subsequently violated that condition by using marijuana. The first time she tested positive, she was sentenced to 30 hours of community service, and her probation was extended.⁵ After she admitted to using marijuana the second time, and after the Court revoked her HYTA status and sentenced her to 10 days in jail, she moved to modify the order, arguing that the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 et seq., legalized her conduct and barred any state penalty.⁶ The sentence was stayed pending her appeals.

The trial court denied her motion, holding that MCL 771.3(1)(a) requires probationers to obey “any criminal law of the United States,” which includes the Controlled Substances Act. The court further held that, even if abstention were not mandated, the restriction was a valid discretionary condition under MCL 771.3(3) because it served rehabilitative and public-safety purposes.⁷

⁵ Probation Violation Hearing, 23 March 2022 [EXHIBIT 3]

⁶ Probation Violation Hearing #2, (“PV #2”) 16 August 2022 [EXHIBIT 4] The second time she tested positive and admitted using marijuana while pregnant. [PV #2, p. 8] [EXHIBIT 4] She did not possess a medical marijuana card. (PV #2, p. 11)

⁷ PV #2, pp. 22-24 [EXHIBIT 4] “The defendant knew for all intents and purposes at the time she was placed on probation, this was a condition. She has violated this before. We have a — a duty to protect the public when they are

The circuit court denied defendant's application to appeal, holding that probationers formed a separate class of people from law-abiding citizens, courts were permitted to restrict a probationer's use of legal substances, including recreational marijuana and alcohol and that such a condition served the public interest because substance abuse is often the underlying issue in shoplifting.⁸

The Court of Appeals affirmed, concluding that the MRTMA and the probation statute can be harmonized and that probationers, unlike ordinary citizens, remain subject to additional restraints flowing from their conviction and conditional liberty.

The Michigan Supreme Court granted leave to consider (1) whether MCL 771.3(1)(a) mandates a marijuana-use prohibition; and (2) if not, whether MRTMA-compliant use may nevertheless be restricted as a discretionary condition of probation.

on probation. [S]he was pregnant during this which I think would be another protection that the use of controlled substances while pregnant --- I think—is concerning to the Court as well.” *Id.*, p. 23 [EXHIBIT 4]

⁸ “And so I certainly would invite further appellate review of this issue, but recognizing that probation is a state of grace, and we do know that – I know just from my experience on the bench here that individuals with shoplifting backgrounds oftentimes have substance use disorders. And in the interest of protecting society, you know, I think that there is a compelling state interest here to treat individuals who have already been in trouble with the law differently than individuals who are not in trouble with the law.” (Oral Argument, 27 December 2022, page 11) [EXHIBIT 5] For the past decade, the Honorable Suzanne Hoseth-Kreeger has overseen the Eighth-Circuit's recovery drug court program.

STANDARD OF REVIEW

Statutory interpretation presents a question of law reviewed *de novo*.⁹ When two statutes potentially conflict, courts must, where reasonably possible, construe them to give effect to both.¹⁰ The application of a statute to established facts and the reasonableness of probation conditions are reviewed for abuse of discretion.¹¹

⁹ *People v Pinkney*, 501 Mich 259, 268 (2018).

¹⁰ *House Speaker v Governor*, 443 Mich 560, 579 (1993).

¹¹ *People v Graber*, 128 Mich App 185, 187 (1983).

ARGUMENT

Defendants who consent to probation in lieu of incarceration are subject to both mandatory conditions,¹² and discretionary conditions, specifically tailored to the probationer's circumstances.¹³ Regarding the mandated conditions, in pertinent part, Ms. Hess agreed "not to violate any criminal law of * * * the United States ***."

Defendant-appellant does not dispute that she twice admitted to testing positive and using marijuana twice while on probation, the second time while she was pregnant.¹⁴

Defendant argues that the Court of Appeal's decision upholding the mandatory

¹² MCL 771.3(1)

¹³ MCL 771.3(2)

¹⁴ Section 8 of the MMRTA acknowledges the dangers to an unborn child:

"A requirement that all marijuana sold through marijuana retailers and marijuana microbusinesses include on the exterior of the marijuana packaging the following warning printed in clearly legible type and surrounded by a continuous heavy line:

WARNING: USE BY PREGNANT OR BREASTFEADING WOMEN, OR BY WOMEN PLANNING TO BECOME PREGNANT, MAY RESULT IN FETAL INJURY, PRETERM BIRTH, LOW BIRTH WEIGHT, OR DEVELOPMENTAL PROBLEMS FOR THE CHILD."

condition of probation of not violating federal law “erroneously requires Michigan state judges to enforce federal law.”¹⁵ The People disagree.

I. MCL 771.3(1)(a) Mandates Compliance with Federal Criminal Law, Including the Controlled Substances Act.

A. Plain Text Controls

The statute provides that a probationer “shall not violate any criminal law of the United States.” The use of “shall” is mandatory, not permissive. The federal Controlled Substances Act (“CSA”) prescribes the possession and use of marijuana.¹⁶ . By incorporating this federal law, Michigan’s Legislature required probationers to abstain from conduct that remains a federal crime, even if it is tolerated under state law.

¹⁵ Defendant-Appellant’s supplemental brief, p. 14

¹⁶ 21 U.S.C. § 844(a).

B. Specific Deference to Federal Law.

The MMRTA, by its terms, does not supersede “any applicable federal law.”¹⁷

“Nothing in this act purports to supersede any applicable federal law, except where allowed by federal law.”¹⁸

The above language is an acknowledgement that possession and use of marijuana remain illegal under federal law and that the state law does not preempt federal law.¹⁹

C. No Implied Repeal by MRTMA

The MRTMA neither references Michigan’s probation act²⁰ nor expresses intent to abrogate it. Repeal by implication is strongly disfavored; statutes must be harmonized

¹⁷ MCL 333.27967. Section 2 of the MMRTA provides that “[t]he purpose of this act is to make marihuana legal *under state and local law* . . .” (emphasis added).

¹⁸ MCL 333.27967 (emphasis added)

¹⁹ The MMMA (Initiated Law 1 of 2008), the MRTA’s predecessor, expressly acknowledges the disparity between the state law and federal law. (“[F]ederal law currently prohibits any use of marihuana except under very limited circumstances.” MCL 333.26422(c).

²⁰ MCL 771.3 *et seq.*

where possible.²¹ The MRTMA regulates the general public's conduct under state law, while MCL 771.3 governs the subset of convicted offenders who enjoy conditional liberty. Both can coexist.

D. Functional Distinction from *Ter Beek v City of Wyoming*.

Defendant-Appellant's reliance on *Ter Beek*,²² is inapposite. In *Ter Beek*, the City of Wyoming enacted a zoning ordinance that in part prohibited "[u]ses that are contrary to federal law . . ."

In an analysis that the Court characterized as "non complex," the Court invalidated the Ordinance because it was preempted with the MMRTA which in turn is not preempted by the federal controlled substances act.²³

The Defendant appellant asserts that since Michigan MCL 771.3(1)(a) also requires compliance with federal law, Michigan's probation act, like the Ordinance in *Ter Beek*, should be invalidated. This reasoning does not withstand the mildest of scrutiny.

Ter Beek addressed municipal preemption, not judicially imposed state probation

²¹ *House Speaker v Governor*, 443 Mich 560 (1993)

²² 495 Mich 1 (2014)

²³ *Id.*, pp. 18, 24.

conditions. Here, the State acts through its courts to administer its own sentencing framework, not as a subordinate municipality attempting to override state law. The MRTMA's state-level immunities do not disable the judiciary from enforcing federal compliance conditions already mandated by the Legislature.²⁴ *Ter Beek* affirms that state law controls the field and its' subordinate political subdivisions can't contradict it. Far from undermining our position, *Ter Beek* underscores that the Legislature may—if it chooses—require probationers to comply with federal criminal law.

E. No federal mandate compelling State courts to criminalize marijuana.

Ms. Hess argues that the law requiring probationers to abide by federal law somehow constitutes a federal mandate compelling the State—or its courts—to criminalize marijuana. But there isn't.

The federal government has never claimed that states are constitutionally required

²⁴ The decisional framework in *Ter Beek* wasn't about federal supremacy at all; it was about state-law pre-emption—a local ordinance conflicting with a state statute. Wyoming's zoning ordinance said no land use was

This Court held the City couldn't do that. Under our state pre-emption doctrine (*People v Llewellyn*), a municipality may not enact or enforce an ordinance that "prohibits what state law permits." The key point is that the State can choose not to penalize what federal law still forbids, and a local government can't override that choice.

Wyoming's zoning ordinance said no land use was lawful if it violated any federal law. Because the Controlled Substances Act makes all marijuana use illegal, that clause effectively re-criminalized conduct the Michigan Medical Marihuana Act expressly allowed. When Wyoming passed an ordinance banning it anyway, the city was overruling Lansing. That's why it lost. Nothing more can be gleaned from that decision.

to mirror the CSA. The CSA binds individuals under federal law; it doesn't preempt the States from removing their own penalties or granting their own privileges. This Court in *Ter Beek* held that the Supremacy Clause doesn't force Michigan to criminalize marijuana just because Congress did. This Court specifically held that absent a "positive conflict" between the MMRA and the CSA, the two laws can co-exist. No conflict, no preemption.²⁵

No federal court in turn has held that a Defendant's compliance with a state's medical or recreational marijuana laws furnishes a defense to federal probation violations under the Controlled Substance Act.²⁶

²⁵ *Id* at 19.

²⁶ The Rohrabacher Amendment to federal appropriations bill, also known as Sec. 538, prohibits the US Justice Department from spending funds to interfere with the State's implementation of state medical cannabis laws. However, the federal courts have consistently held that this does not alter the Controlled Substance Act – while reaffirming the principal of the Supremacy Clause with any potential conflict with state laws. See *United States v Walsh*, 654 Fed.Appx. 689 (2016) [EXHIBIT 7.] The Defendant also has attached an outdated internal DOJ memo that disfavors enforcement of the CSA where it conflicts with a State's Medical Marijuana laws. That memo was repealed by then United States Attorney General Sessions [Exhibit 8]

United States v Hicks, US District Court, ED Michigan, (2010) EXHIBIT 9. ("Section 8 of the MMMA does not furnish Hicks a defense to this *federal* prosecution. Marijuana is designated as a Schedule I drug by the federal Controlled Substances Act (CSA). 21 U.S.C. § 812(c)(10). Manufacturing and dispensing it is a federal crime. 18 U.S.C. § 841(a), (b)(1)(D). By the terms of the CSA, marijuana is "contraband for *any* purpose," and, "if there is any conflict between federal and state law" on marijuana legislation, 'federal law shall prevail' under the authority of the Supremacy Clause. *Gonzales v. Raich*, 545 U.S. 1, 27, 29 (2005).

D. Probation violation is not a crime.

Defendant was convicted of shoplifting, not possession or use of marijuana. By imposing probationary sanctions on the possession and use of marijuana that is forbidden under federal law, trial courts are not prosecuting probationers for using marijuana, as the defendant suggests. Probation violation is not a crime and does not result in criminal conviction.²⁷ To state the obvious, when a trial court imposes individually tailored sanctions for violation of probation or conditional release, it is simply carrying out a sentence already lawfully imposed under State law and not enforcing federal law or imposing the penalty prescribed by either State or federal marijuana law. Again, revoking state probation for a violation of federal law, or for any reason, is not a conviction. It does

"Though Section 538 purports to temporarily deny funding for the prosecution of certain crimes, the rider's text contains no suggestion that the substantive conduct prohibited by the CSA has now been made legal." Footnote 17, *US v Trevino*, 7 F.4th 414 (2021)

²⁷ "[V]iolation of probation is not a crime, and a ruling that probation has been violated is not a new conviction." *People v Kaczmarek*, 464 Mich 478, 482 (2001). Instead, a violation of probation simply clears the way for a resentencing on the original offense. *Kaczmarek*, 464 at 483. "A probation violation hearing is not a criminal prosecution." *People v Johnson*, 191 Mich App 222, 225-226 (1991)

not result in a federal charge or penalty.²⁸ Despite Defendant's mischaracterization, MRTMA's state-level immunities do not disable the judiciary from enforcing federal compliance conditions already mandated by the Legislature.

²⁸ *Id.*

II. Even, Arguendo, Abstention Is Not Mandatory, the Marijuana Prohibition Is Valid as a Discretionary Condition Under MCL 771.3(3).

A. Probation Is a Voluntary Contractual Arrangement.

Under MCL 771.4(1), probation requires the probationer's consent. This bargained for privilege is the crux of supervisory release:

"It is the intent of the legislature that the granting of probation is a matter of grace *requiring the agreement of the probationer to its granting and continuance.*"²⁹

²⁹(emphasis added) [EXHIBIT 2] MCL 771.4(1). A defendant has the option to decline a term of probation in favor of a sentence of incarceration. *People v. Bensch*, 328 Mich 1 (2019). Probation is "rejectable," "optional and essentially voluntary." *Id.* at 6., citing *People v. Peterson*, 62 Mich App 258, 270-272 (1975).

Defendant agreed to abide by the condition that she would not violate any federal criminal law.³⁰ That consent operates as a contractual waiver³¹ of certain privileges, exchanged for the benefit of conditional liberty.³² Generally, plea and sentencing

³⁰ There are all sorts of activity and conduct that is prescribed by federal law that would be legal under Michigan state law. Examples include environmental protection, civil rights and the regulation of firearms. For example, the federal Lautenberg Amendment bans gun possession for anyone with a misdemeanor conviction for domestic violence while state law is more permissive and may restore a person's gun rights after a certain period of time following a misdemeanor domestic violence conviction. Convicted felons in Michigan whose gun rights have been restored under state law are still in violation of federal law by possessing a firearm. Federal authorities can prosecute that individual for illegal gun possession, even if the possession is considered legal by the state.

³¹ "Waiver is an intentional relinquishment of a known right." *Bensch, supra*, quoting *People v. Kammerrando*, 307 Mich App 98, 117 (2014).

³² Legal rights, even constitutional ones, are presumptively waivable. *United States v. Mezzanatto*, 513 U.S. 196, 200–201, 115 S.Ct. 797, 130 L.Ed.2d 697 (1995); see also *New York v. Hill*, 528 U.S. 110, 114, 120 S.Ct. 659, 145 L.Ed.2d 560 (2000); *Peretz v. United States*, 501 U.S. 923, 936, 111 S.Ct. 2661, 115 L.Ed.2d 808 (1991) ("The most basic rights of criminal defendants are ... subject to waiver"). In *People v. Rodriguez*, 192 Mich App 1, (1991), for example, the court of appeals upheld a then waiver to a constitutional right to appeal in exchange for charging or sentencing concessions.

agreements that do not violate public policy are enforceable.³³ Here, the prohibition of defendant using marijuana while on probation advances public policy.³⁴

B. The MRTMA Creates a Privilege, Not an Inalienable Right.

MCL 333.27955(1) describes marijuana use as a “privilege.”³⁵ Privileges may be waived by voluntary agreement, especially in the context of probation, where liberty itself is conditional. That the State has codified a privilege for adults to use marijuana and be free from criminal prosecution or civil penalties, does not make the privilege unalienable in contract.

³³ Michigan appellate courts consistently have upheld all types of probationary restrictions on otherwise lawful conduct, even restricting constitutional rights. E.g., *People v Peterson*, 62 Mich App 258 (1975), (no constitutional right for probationer to challenge warrantless search and seizure); *City of Detroit v Del Rios*, 16 Mich App 617 (1968) (suspension of driving privileges); *People v Graber*, 128 Mich App 765 (1983) (cannot be in company of wife without permission from probation agent); *People v Bransen*, 138 Mich App 455 (1984) (cannot reside at religious camp where minors present); *People v VanHorn*, unpublished decision of court of appeals, No. 369808 (2025) (social worker three-year ban on working in mental health field.) But see *People v Smith*, 502 Mich 624 (2018), (condition that defendant cannot hold public office during five-year term of probation contrary to public policy.)

³⁴ Defendant argues that that probationary condition prohibiting use of marijuana is unlawful, not that it otherwise would be rationally related to her rehabilitation. (See Footnote 3 of the Court of Appeal’s decision.)

³⁵ The voter passed initiative provides that possession and use of marijuana is not “grounds for arrest, prosecution or penalty in any manner, are not grounds for search or inspection, and are not grounds to deny any other right or privilege.” MCL 333.27855(1).³⁵

C. Reasonableness and Public Safety.

Even assuming discretion, the trial court's condition was reasonable. Abstention from marijuana use is rationally related to rehabilitation, sobriety, and public protection—core statutory objectives under MCL 771.3(3). Courts regularly impose similar restrictions on alcohol or firearms despite their general legality.

D. Equitable Consideration.

Defendant is not an innocent citizen seeking to vindicate a general liberty but a probationer seeking relief from the consequences of a freely undertaken bargain. Having reaped the benefit of probation in lieu of incarceration, she cannot now repudiate its terms because the voters liberalized the state marijuana law.³⁶

³⁶Specialty problem-solving courts, such as drug recovery courts, sobriety courts, veteran treatment courts, and adult and juvenile mental health treatment courts, are intensive programs geared to reduce recidivism offered to eligible defendants and can be an alternative to incarceration. Defendant entreats the Court to find that prohibiting adult use of recreational marijuana is an "unlawful" condition of probation; an absolute right or privilege that cannot be waived. Such a finding would eviscerate a key component of these problem-solving courts; to stiffen the probationer's resolve to refrain from using all non-prescribed drugs and mind-altering substances. Fewer successful participants in problem solving courts would mean higher rates of incarceration and recidivism. In response to the Court of Appeal's decision in *People v Thue*, 336 Mich App 35 (2021) which found that a probationer's right to use medical marijuana was inconsistent with and superseded the probation act, the Legislature enacted HB 5512 by a greater than 2/3 vote in each chamber as required by Mich Const 1963, Art 2, §9 (House: 87-Yea/16-No; Senate: 30 Yea, 8 No.) 186 PA 2022. The law now allows probationary problem-solving courts, in their discretion, to ban the medical use of marijuana.

CONCLUSION AND PRAYER FOR RELIEF

The probation statute's mandate that probationers "shall not violate any criminal law of the United States" encompasses the federal prohibition on marijuana use. Even if this Court concludes otherwise, the trial court's marijuana-use restriction remains valid as a discretionary, consensual, and reasonable condition of probation under MCL 771.3(3) and MCL 771.4(1).

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

Dated: 31 October 2025

/s/ Thomas A. Ginster

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CERTIFICATION OF WORD COUNT

The undersigned certifies that this brief was filed in conformity with MCR 7.212(B)(1) and contains 4,066 words.

/s/ Thomas A. Ginster
