

Court of Appeals, State of Michigan

ORDER

People of MI v Samuel Demetrious Ambrose

Docket No. 327877

LC No. 14-018928-FH

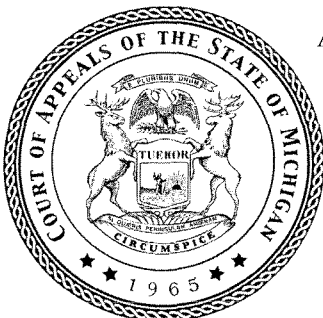
Amy Ronayne Krause
Presiding Judge

Peter D. O'Connell

Michael F. Gadola
Judges

The Court orders that the delayed application for leave to appeal is GRANTED, limited to Issue II pertaining to the scoring of offense variable nine, MCL 777.39. The parties are directed to address whether a fetus is a “person” for purposes of counting as a victim “each person who was placed in danger of physical injury or loss of life or property,” MCL 777.39(2)(a). The parties should address in their briefs this Court’s analysis in *People v Guthrie*, 97 Mich App 226 (1980), holding that a fetus is not a person for purposes of prosecution under the negligent homicide statute, MCL 750.324. In *Guthrie*, this Court found significant the Legislature’s references to fetal death in the Assaultive Abortion and Manslaughter by Abortion statutes, MCL 750.322 and MCL 750.323, but not in the negligent homicide statute, and concluded that the omission was intentional: “The fact that the Legislature would refer to a fetus in two statutes but not in the negligent homicide statute is strongly persuasive that the Legislature did not intend that a viable fetus is a ‘person’ within the meaning of that term in the statute.” *Id.* at 233. The parties should also address whether the trial court’s application of MCL 777.39(2)(a) conflicts with the Legislature’s recognition in the Infant Protection Act, MCL 750.90g, that a live infant either “completely expelled from his or her mother’s body” or “partially outside his or her mother” is a “person,” entitled to constitutional and legal rights and protection. MCL 750.90g(2)(a); MCL 750.90g(2)(b). The time for taking further steps in this appeal runs from the date of the Clerk’s certification of this order.

O’Connell, J., would deny the defendant's request for leave to appeal, the trial court clearly concluded that two victims were placed in danger of physical injury by this defendant. I would affirm the well reasoned decision of the learned trial court.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 13 2015

Date


Chief Clerk