

# Order

Michigan Supreme Court  
Lansing, Michigan

September 29, 2016

Robert P. Young, Jr.,  
Chief Justice

151282

Stephen J. Markman  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 151282  
COA: 324831  
Saginaw CC: 14-039708-FC

JOHN JOSEPH BARRERA,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the January 21, 2015 order of the Court of Appeals is considered. We DIRECT the Saginaw County Prosecuting Attorney to answer the application for leave to appeal within 28 days after the date of this order. The prosecutor shall specifically address whether, pursuant to *People v Thompson*, 488 Mich 888 (2010) and *People v Spanke*, 254 Mich App 642 (2003), Offense Variable 8, MCL 777.38, should not have been scored in this case where the movement was “incidental” to the offense of criminal sexual conduct in the second degree. See also *People v Hardy*, 494 Mich 430, 442 (2013) (“[A]bsent an express prohibition, courts may consider conduct inherent in a crime when scoring offense variables.”).

The application for leave to appeal remains pending.



t0922

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 29, 2016

  
Clerk