

Order

Michigan Supreme Court
Lansing, Michigan

November 25, 2015

Robert P. Young, Jr.,
Chief Justice

152111

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-Appellant,

v

SC: 152111
COA: 320973
Ionia CC: 2013-015796-FH

DAMACENO RICHARD ABREGO,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the June 11, 2015 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on whether to grant the application or take other action. MCR 7.305(H)(1). The parties shall file supplemental briefs within 42 days of the date of this order addressing whether the Court of Appeals erred in holding that, pursuant to *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 operating while intoxicated (second offense) with a passenger under 16. 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 parties should not submit mere restatements of their application papers.

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.



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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.

November 25, 2015


Clerk