

STATE COURT ADMINISTRATIVE OFFICE UPDATE

MADCM Annual Conference



September 23, 2022

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Directives, Resources, and Information

- Chief Justice McCormack will retire from the Michigan Supreme Court no later than December 31, 2022. [Read more.](#)
- SCAO encourages courts to explore new resources below that can assist them in determining whether hearings should be held in person or via videoconferencing technology, in particular:
 - Videoconferencing Technology [FAQs](#)
 - Bench cards for district, ([civil](#) & [criminal](#)) circuit, and probate courts
 - See also the webpage on [Virtual Courtrooms](#)
- The Michigan Judicial Council has published the [MJC Strategic Agenda](#) where you can read an outline of long-term goals. Also, find the [MJC Operational Plan](#) that provides detailed plans for the strategic initiatives for the next year.
- [Memorandum](#) from the State Court Administrative office regarding the new rules regarding remote proceedings.
- [Memorandum](#) from the State Court Administrative Office summarizing the court rule amendments and additions to Chapter 6 - Criminal Procedure.
- The [State Civil Infraction List](#) has been updated for 2022.
- [SCAO Modifies Several Civil Court Forms](#) – Find explanations of changes—including copies of the forms with the changes highlighted.
- [SCAO Modifies Several Criminal Court Forms](#) – Find explanations of changes – including copies of the forms with the changes highlighted.

Court Rules & Administrative Orders

Proposed

MCR Cite:	6.302 and 6.610 – Pleas of Guilty and Nolo Contendere; Criminal Procedure Generally (republished for comment)
ADM File No:	2018-29
Comment Expires:	July 1, 2021
Staff Comment:	The proposed amendments of MCR 6.302 and MCR 6.610 would eliminate the ability for a court to establish support for a finding that defendant is guilty of the offense charged as opposed to an offense to which defendant is pleading guilty or nolo contendere. The sentencing guidelines make clear that offense variables are to be scored on the basis of the “sentencing offense alone,” not the charged offense. Further, an “offense to which defendant is pleading” would include the charged offense (if defendant is pleading to the charged offense) as well as any other offense that may have been offered by the prosecutor, so the “charged offense” clause may well be unnecessary. <i>*Pending results of public hearing held 9/22/21.</i>

MCR Cite: **Amendment to AO No. 2020-17 and 4.201 - Summary Proceedings to Recover Possession of Premises**

ADM File No: [2020-08](#)

Comment Expires: November 1, 2022

Staff Comment: The proposed amendments would permanently incorporate certain provisions from Administrative Order No. 2020-17 into court rule format under MCR 4.201 and would make a number of minor changes due to a relettering of the rule. The proposed amendments would also incorporate public comment received at the public hearing on March 16, 2022 and via email, as well as additional recommendations and input received from other stakeholders including the JFAC and the 13 13 MDJA. Finally, the proposed amendments in this order reference MCR 2.407, which is amended effective September 9, 2022.

MCR Cite: **6.005 – Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grand Jury Proceedings**

ADM File No: [2020-13](#)

Comment Expires: October 1, 2021

Staff Comment: The proposed amendment of MCR 6.005 would clarify the duties of attorneys in preconviction appeals. **Pending results of public hearing held 3/16/22.*

MRE Cite: **410 – Inadmissibility of Pleas, Plea Discussions, and Related Statements**

ADM File No: [2020-29](#)

Comment Expires: October 1, 2021

Staff Comment: The proposed amendments would add vacated pleas to the list of guilty pleas that may not be used against defendant. Also, the proposed addition of a reference to MCR 6.310 in subsection (3) would add a prohibition on using a statement made during defendant’s withdrawal of plea to the prohibition on using statements made under MCR 6.302 in entering a plea, which would make the rule more consistent with FRE 410. **Pending results of public hearing held 3/16/22.*

MCR Cite: **8.119 – Court Records and Reports; Duties of Clerks**

ADM File No: [2021-13](#)

Comment Expires: August 1, 2022

Staff Comment: The proposed amendment of MCR 8.119 would clarify that a request for a fee waiver must be filed in accordance with MCR 2.002(B), which requires the request to be made on a form approved by the State Court Administrative Office.

MCR Cite: **Rescission of AO No. 1998-1 and Amendment of MCR 2.227; Transfer of Actions on Finding of Lack of Jurisdiction**

ADM File No: [2021-17](#)

Comment Expires: August 1, 2022

Staff Comment: The proposed rescission of Administrative Order No. 1998-1 and proposed amendment of MCR 2.227 would move the relevant portion of the administrative order into court rule format and make the rule consistent with the holding in *Krolczyk v Hyundai Motor America*, 507 Mich 966 (2021).

MCR Cite: 6.001 and 6.009 – Use of Restraints on a Defendant

ADM File No: [2021-20](#)

Comment Expires: October 1, 2022

Staff Comment: The proposed addition of MCR 6.009 would establish a procedure regarding the use of restraints on a criminal defendant in court proceedings that are or could be before a jury, and the proposed amendment of MCR 6.001 would make the new rule applicable to felony, misdemeanor, and automatic waiver cases.

MCR Cite: 6.201 - Discovery

ADM File No: [2021-29](#)

Comment Expires: October 1, 2022

Staff Comment: The proposed amendment would require redaction of certain information contained in a police report or interrogation record before providing it to the defendant.

MCR Cite: 3.101 – Garnishment After Judgment

ADM File No: [2022-06](#)

Comment Expires: September 1, 2022

Staff Comment: The proposed amendment would allow writs of garnishment to be served electronically on the Department of Treasury, subject to current e-filing requirements and guidelines established by the Department of Treasury.

Adopted:

MCR Cite: 1.109 and 8.119

ADM File No: [2002-37](#)

Effective Date: May 11, 2022

Comment Expires: September 1, 2022

Staff Comment: The amendments of MCR 1.109 and MCR 8.119 allow protecting personal identifying information to be included in a Uniform Law Citation (ULC) and on proposed orders filed with or submitted to the court. The proposed order must be protected by the court as required by MCR 8.119(H), as if the document was prepared or issued by the court.

MCR Cite: 1.109 Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access

ADM File No: [2002-37](#)

Effective Date: April 13, 2022

Comment Expires: August 1, 2022
Staff Comment: The amendment of MCR 1.109 provides an e-filing court with the authority to determine the most appropriate means of sending notices and other court-issued documents that are generated from its case management or local document management system.

MCR Cite: **1.109 – Court Records Defined; Document Defined; Filing Standards; Signatures; Electronic Filing and Service; Access**

ADM File No: [2002-37](#)
Comment Expires: January 1, 2023
Effective Date: September 14, 2022
Staff Comment: The amendment of MCR 1.109 provides SCAO the flexibility to determine, when appropriate, when certain documents filed on paper do not need to be imported into the MiFILE document management system until bulk e-filing capability is available.

ADM Order: **2021-7 – Continuing Judicial Education Program**

ADM File No: [2019-33](#)
Effective Date: January 1, 2024
Staff Comment: Establishes a mandatory continuing judicial education program for the state’s justices, judges, and quasi-judicial officers and will require completion of 24 hours of continuing judicial education every two years [with 6 of the 24 hours dedicated to ethics]. The 2024 effective date is intended to provide sufficient time for an electronic reporting system to be put in place, as well as allow the Board, which members will be appointed soon, to begin creating policies, forms, and other necessary requisites to implementation of this program.

MCR Cite: **Rescission of AO Nos. 2020-1, 2020-6, 2020-9, 2020-13, 2020-14, 2020-19, and 2020-21; Amendment of Rules 2.002, 2.107, 2.305, 2.407, 2.506, 2.621, 3.904, 6.006, 6.106, 6.425, 8.110, 9.112, 9.115, and 9.221 of the Michigan Court Rules and Administrative Order No. 2020-17**

ADM File No: [2020-08](#)
Effective Date: September 9, 2022
Staff Comment: After careful consideration of public comment at the Court’s March 16, 2022 public administrative hearing, these amendments reflect a balance between providing consistent practices throughout Michigan’s judiciary and retaining judicial discretion to determine what is best for each case or proceeding (videoconferencing).

MCR Cite: **Amendment of AO No. 2020-17 – Continuation of Alternative Procedures for Landlord/Tenant Cases**

ADM File No: [2020-08](#)
Effective Date: August 10, 2022
Staff Comment: AO No. 2020-17 was entered June 9, 2020; language as amended by orders

entered June 24, 2020, October 22, 2020, December 29, 2020, January 30, 2021, March 22, 2021, April 9, 2021, July 2, 2021, and July 26, 2021, and August 10, 2022. The latest amendment adds exceptions to the adjournment requirement for cases in which a plaintiff landlord is seeking to recover possession of the premises due to (1) manufacturing or sale of narcotics on the property, (2) a health hazard or physical injury to the property, (3) threat of or actual physical injury to an individual, or (4) taking or holding possession of the property by force or trespass under MCL 600.5714(1)(b), (d), (e), or (f), respectively.

ADM Order: **2022-3 – Increase Attorney Dues for State Bar of Michigan**
ADM File No: [2021-26/2021-42](#)
Effective Date: October 1, 2022
Staff Comment: This administrative order increases the State Bar’s dues for most members by \$100 for a total of \$415 per year.

MCR Cite: **MCR 6.001, 6.003, 6.006, 6.102, 6.103, 6.106, 6.445, 6.615, and 6.933; proposed additions of MCR 6.105, 6.441, and 6.450**
ADM File No: [2021-41](#)
Effective Date: September 1, 2022
Staff Comment: The amendments make the rules consistent with recent statutory revisions that resulted from recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration.

MCR Cite: **Housekeeping Amendments**
ADM File No: [2021-22](#)
Effective Date: July 1, 2022
Staff Comment: These amendments update cross-references and make other non-substantive revisions to clarify the rules.

Legislation

Statute Cite: **MCL 257.1 -257.923 (adds MCL 257.649a)**
P.A. Number: [2022 PA 92](#)
Effective Date: June 6, 2022
What it Does: Amends the Michigan Vehicle Code to require a driver of a vehicle at a location other than an intersection intending to turn left across a lane of traffic traveling in the opposite direction to yield the right-of-way to all vehicles approaching from the opposite direction that were so close to the driver as to constitute an immediate hazard. An individual who violated the bill would be responsible for a civil infraction.

Statute Cite: **MCL 776.19**
P.A. Number: [2022 PA 114](#)
Effective Date: September 22, 2022
What it Does: Amends Chapter XVI (Miscellaneous Provisions) of the Code of Criminal Procedure to delete the cap (e.g. \$2000) on the amount of a reward that a county may offer for the arrest and conviction of a person who committed a crime or escaped from a penal institution.

Statute Cite: **MCL 287.274a and 287.322**
P.A. Number: [2022 PA 120 & 121](#)
Effective Date: September 22, 2022
What it Does: Amends the Dog Law to eliminate a provision requiring certain local government officials to provide information to a dog owner regarding the availability of a statewide tattoo identification registry when issuing a dog license. And it eliminates a provision allowing a court to order a dangerous animal that has not caused serious injury or death to an individual or dog, if the dangerous animal is a dog, to have an identification number tattooed on it at the owner's expense, and instead require it to be assigned a permanent identification number.

Statute Cite: **MCL 330.1100d**
P.A. Number: [2022 PA 146](#)
Effective Date: July 19, 2022 (Sine Die)
What it Does: Amends the Mental Health Code to allow a county to contract with a private security company to transport a person, after the person has first been taken into protective custody by a peace officer, to a facility for mental health screening or, under a court order, to transport the person to a facility for mental health treatment. The bill would extend to a security transport officer the same immunity from criminal and civil liability available to peace officers. The bill also would create the Mental Health Transportation Fund.

Statute Cite: **MCL 750.410c**
P.A. Number: [2022 PA 147](#)
Effective Date: July 19, 2022
What it Does: Amends the Michigan Penal Code to make it a criminal offense to sell, deliver, distribute, or possess with the intent to sell, deliver, or distribute a substance (e.g. synthetic urine) to mask the presence of drugs in a urine or oral fluid (saliva) test. A violation would be a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.

Statute Cite: **MCL 750.499**
P.A. Number: [2022 PA 155](#)
Effective Date: October 17, 2022
What it Does: Amends the Michigan Penal Code to prohibit a person from knowingly and

willfully raising a false active shooter alarm in a public space, including a school. A person who violated would be guilty of a misdemeanor punishable by imprisonment for up to one year and a maximum fine of \$1,000.

Statute Cite: **MCL 722.641 & 722.644**
P.A. Number: [2022 PA 167](#)
Effective Date: July 21, 2022
What it Does: Amends the Youth Tobacco Act to modify the definition of minor to mean an individual who is less than 21, instead of 18, years of age (which, in effect, would increase, from 18 to 21, the age that an individual could purchase tobacco products, vapor products, or alternative nicotine products). It also requires signs to be posted by retailers to indicate that the purchase of tobacco products, vapor products, or alternative nicotine products by individuals under 21, instead of 18, years of age is illegal. And requires a person to verify that an individual was at least 21, instead of 18, years of age before selling or furnishing a tobacco, vapor, or alternative nicotine product to that individual.

Statute Cite: **MCL 333.12606a**
P.A. Number: [2022 PA 168](#)
Effective Date: July 21, 2022
What it Does: Amends amend the Public Health Code to require a tobacco specialty retail store to prohibit a person under the age of 21, instead of 18, from entering the store while it was open for business.

Statute Cite: **MCL 750.42b**
P.A. Number: [2022 PA 169](#)
Effective Date: July 21, 2022
What it Does: Amends the Michigan Penal Code to prohibit a person, as part of its business, from distributing tobacco products to people who did not previously pay or agree to pay for them unless that person, in addition to current requirements, ascertained that the individual who received the product was 21, instead of 18, years of age or older.

Statute Cite: **MCL 722.53**
P.A. Number: [2022 PA 170](#)
Effective Date: July 21, 2022
What it Does: Amends the Age of Majority Act to specify that the Act would not apply to the Youth Tobacco Act.

Statute Cite: **MCL 600.8202**
P.A. Number: [2022 PA 177](#)
Effective Date: July 21, 2022
What it Does: Amends the Revised Judicature Act to increase the compensation of district

court judges to equal that of probate judges, beginning October 1, 2022.

Statute Cite: **MCL 333.26427**

P.A. Number: [2022 PA 186](#)

Effective Date: July 25, 2022

What it Does: Amends the Michigan Medical Marihuana Act (MMMA) to require the Act to comply with certain provisions of the Revised Judicature Act. Generally, the MMMA authorizes the possession and use of limited amounts of marihuana by individuals with certain conditions who have been issued a medical marihuana registry identification card. The card holder is prohibited from possessing or otherwise engaging in the use of medical marihuana in certain places. Under the bill, however, if the MMMA were inconsistent with any part of Chapters 10a (Drug Treatment Courts), 10b (Mental Health Courts), 10c (Juvenile Mental Health Courts), or 12 (Veterans Treatment Courts) of the Revised Judicature Act, that part would apply.


Case Law

[People v White](#), ___ Mich ___ (2022). Kevin White allegedly sold drugs to a woman in Macomb County who shared them with the victim in Livingston County and that later caused a fatal overdose. Defendant White was charged in Livingston County with aiding and abetting the delivery of a controlled substance causing death. Defendant moved to dismiss the charges, arguing that venue was proper only in Macomb County. The circuit court denied the motion but stayed the proceedings so that defendant could appeal the decision. On interlocutory appeal, the COA affirmed the circuit court's denial of defendant motion to dismiss holding that venue was proper in Livingston County under MCL 762.8. The MSC peremptorily reversed the COA holding that there was no evidence that defendant knew that the drugs would be consumed in Livingston County and remanded back to the COA. On remand, the COA once again affirmed the trial court's opinion. Defendant appealed again to the MSC. **The MSC held that "[t]he county in which the criminal act of the principal occurred" is "the correct venue . . . for a criminal prosecution under an aiding and abetting theory."** **The court further reasoned that "[b]ecause defendant is being charged with having aided and abetted [the principal's] delivery, under MCL 767.39, he may be prosecuted, indicted, and tried as if he had directly committed such offense, meaning that if Livingston is a proper venue for prosecuting [the principal], it is also a proper venue for prosecuting defendant."** *White*, ___ Mich at ___ (cleaned up).

[People v DeRousse](#), ___ Mich App ___, (2022). An animal control officer responded to a call that there was a cow running loose in the roadway. The officer found the cow and followed it back to its property. While making sure the cow was secured, the officer observed an alarming number of dead animals on the defendant's property, some in carcass form and others that were skeletal. The officer learned from a neighbor that there had been multiple complaints of "animals at large" on the defendant's property. The officer eventually got a search warrant and seized approximately 35 animals from the property. Some of the animals were seized from the pole barns located on the

property. The officer testified that were dogs that did not have access to food or drinking water, had internal and external parasites, and were covered with urine and feces. There were also cows that did not have access to food or water. The property also contained several carcasses of dead chickens, a lamb, and a snapping turtle. The defendant was charged with abandonment/cruelty to 25 or more animals. However, after the probable cause hearing, the defendant moved to suppress evidence regarding the seizure of the animals because the search warrant only permitted the officers to search “a single-family dwelling” which did not include the outbuildings on the property. After an evidentiary hearing, the trial court suppressed the evidence seized from the two pole barns and this appeal followed. **The Court of Appeals reasoned that “[w]hen evaluating whether a defendant has a reasonable expectation of privacy in a building sufficient to challenge a search under the Fourth Amendment, [the court] must inquire whether [the] defendant took normal precautions to maintain his privacy[.]”** (quotation marks and citation omitted; second alteration in original). Additionally the court found that “the secured nature of the west barn reflects that [she] took normal precautions to maintain her privacy”[.] **“Because [defendant] had a reasonable expectation of privacy in the interior of both barns, a warrant was required before [the police] could search either barn.”** *Id.* at _____. Further, **“the warrant described with particularity only the residence located on the property,”** and **“[i]t did not authorize—even indirectly—the search of other structures located on the property.”** *Id.* at _____. **“As a result, the search of those structures was a warrantless search,”** and **“suppression of the evidence seized during the warrantless search of the barns was not barred by the good-faith exception to the exclusionary rule.”** *Id.* at _____.

[People v Brcic](#), ____ Mich App ____, (2022). Officers were dispatched to a scene where a car accident had taken place. Upon arrival, the officers found a silver Tahoe, on its passenger side. Three nearby juveniles provided officers with a description of the driver of the vehicle. The officers later located the defendant, who had jumped in the nearby river and refused to get out of the water. Once officers removed him from the river, the defendant refused to perform a field sobriety test. Officers observed that defendant had large and fixed pupils, bloodshot and glassy eyes, spoke with very slurred speech, and had a very strong odor of alcohol coming from his breath and person. The also found an open and half full can of beer inside the vehicle. Officers obtained a search warrant for a blood draw but the search warrant merely described “[t]he person, place or thing to be searched” as the “Cheboygan County Jail.” Beyond that, the search warrant provided no guidance about whose blood should be drawn.

STATE OF MICHIGAN 89th JUDICIAL DISTRICT	SEARCH WARRANT	CASE NO.
TO THE SHERIFF OR ANY POLICE OFFICER:		Police Agency: Tuscarora Twp Police Department
		Report Number: 1170-20
, has sworn to the attached affidavit regarding the following:		
1. The person, place or thing to be searched is described as and is located at: <u>Cheboygan County Jail</u>		
2. The PROPERTY to be searched for and seized, if found, is specifically described as:		
<input checked="" type="checkbox"/> A blood sample. <input type="checkbox"/> All alcoholic beverages and containers. <input type="checkbox"/> All suspected controlled substances and containers. <input type="checkbox"/> Other: _____		
<p>IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: I have found that probable cause exists and you are commanded to make the search and seize the described property. Leave a copy of this warrant with affidavit attached and a tabulation (a written inventory) of all property taken with the person whom the property was taken or at the premises. You are further commanded to promptly return this warrant and tabulation to the court.</p>		
Issued Date: <u>7-15-20</u>	 Judge/Magistrate	<u>2176w</u> Bar No.

Officers executed the search warrant from defendant. Defendant was charged with Operating While Intoxicated, Third Offences (OWI-III), among other charges. Defendant then moved to suppress the blood-draw evidence, contending that the warrant failed to particularly describe the place to be searched and the items to be seized. The trial court agreed and suppressed the evidence. The prosecution then sought interlocutory appeal. Case law supports the prosecutor’s assertion that “a court may construe a warrant with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant.” However the Court of Appeals explained that **“appropriate words of incorporation’ are limited to phrases that reflect the magistrate’s explicit intention to incorporate an affidavit or other supporting document for the purpose of providing particularity in describing the place to be searched and the items to be seized under the authority of a search warrant. In this case, the search warrant itself was plainly invalid, and although it referenced the “attached affidavit,” it did not otherwise direct the executing officer to refer to that additional document for such a purpose. Accordingly, the information provided in the affidavit cannot be used to save the plainly invalid search warrant from its lack of particularity as to the place to be searched and the items to be seized.”** Affirmed.

[People v Craig](#), ___ Mich App ___, (2022). A jury convicted the defendant of kidnapping and several criminal sexual conduct (CSC) offenses. Defendant was sentenced to concurrent sentences of 16-35 years imprisonment. Defendant appealed as of right. However, it was discovered almost a year after the trial concluded, that the transcript from the third and final day of the trial was unavailable because the court reporter lost her notes for that day. The defendant asked the court to settle the record by certifying a statement of facts to substitute for the missing transcript or, in the alternative, grant him a new trial. The trial court held an evidentiary hearing in an attempt to settle the record for the proceedings but defense counsel did not recall much about either the testimony or his strategy from that day, nor did he have any record of the questions he asked any witnesses. Defendant then filed a brief requesting a new trial because it was impossible to certify a settled statement of facts in sufficient detail to provide for appellate review. The trial court granted a new trial and the prosecution filed a cross-appeal. This court severed the two appeals and held defendant's appeal in abeyance pending the court's decision on the prosecution's appeal. **The Court of Appeals explained that “[t]he issue here is whether the lack of a transcript, or other detailed record, of the [last day of defendant’s jury trial] violates defendant’s constitutional right to an appeal[.]”** Id. at _____. In this case, “defendant cited specific facts from the surviving record and the evidentiary hearing to identify multiple possible appellate issues for which, if meritorious, he would otherwise be entitled to a new trial”; specifically, “[d]efendant has identified two potential errors that entitle him to a new trial on all charges, and the absence of the transcript from the trial’s third and final day is prejudicial and is denying him the opportunity for a fair appeal.” Id. at _____. In sum, the missing transcript “deprived defendant of his constitutional right to an appeal under Const 1963, art 1, § 20”; “[a]ccordingly, the trial court did not abuse its discretion in granting defendant a new trial[.]” [Craig](#), ___ Mich App at _____.

[Johnson v VanderKooi](#), ___ Mich ___, (2022), rev’g 330 Mich App 506 (2019). The issue of this appeal involves two completely separate cases. In the first case, the GRPD investigated a complaint that a person was looking into vehicles in a parking lot. Defendant was photographed and fingerprinted in accordance with the City’s photograph and print (P&P) procedure. The defendant was ultimately released and not charged with a crime. However, defendant filed suit against the officers and the city based on a violation of his civil rights, but the case was dismissed for summary disposition. In the second case, defendant was stopped after someone gave him a large model train engine. Officers were still suspicious after speaking with the defendant and performed the P&P before releasing without charges. This defendant also filed a civil rights claim that was later dismissed for summary disposition. The Court of Appeals affirmed both appeals and defendants filed a joint application for leave to appeal in the MSC. **In a unanimous opinion, the Supreme Court held: “[F]ingerprinting constitutes a search under the trespass doctrine,” and “[f]ingerprinting an individual without probable cause, a warrant, or an applicable warrant exception violates an individual’s Fourth Amendment rights. “In this case, a police department’s “policy of photographing and fingerprinting individuals stopped without probable cause, referred to as the ‘photograph and print’ (P&P)**

procedure,” “is facially unconstitutional because it authorizes [the police department] to engage in unreasonable searches contrary to the Fourth Amendment.” *Id.* at _____. Moreover, “[b]ecause the P&P policy impermissibly exceeds both the scope and duration of a Terry stop, neither of the searches conducted here falls within the stop-and-frisk exception to the warrant requirement.” *Id.* at _____.

[*People v Lucynski*](#), ____ Mich ____, (2022). A sheriff’s deputy observed two cars stopped in the middle of the road; the vehicles were facing opposite directions with the drivers’ windows next to one another, and the drivers appeared to be talking to one another with their windows down. The deputy followed defendant in a marked patrol vehicle and turned onto the same one-lane driveway that defendant had entered, parking a few feet behind defendant’s car and blocking the only path of egress. The deputy asked defendant if defendant had his driver’s license, to which defendant replied in the negative. Because the deputy smelled the odor of marijuana and alcohol emanating from defendant and noticed that defendant’s eyes were bloodshot, he proceeded to investigate whether defendant was intoxicated. Defendant admitted to smoking marijuana about 20 minutes earlier and to consuming alcohol during the day. A search of the vehicle produced both marijuana and an open container of alcohol. Defendant was arrested. The deputy testified at the preliminary examination that the justification for the traffic stop was that he believed that the vehicles were impeding traffic in violation of MCL 257.676b, even though there were no other vehicles on the road at the time. At the preliminary examination, defendant’s attorney asked to submit briefing to challenge the validity of the stop under MCL 257.676b and to argue that the evidence obtained by the police should be excluded. The district court held that the prosecution failed to prove that the deputy had sufficient cause to initiate the stop and dismissed the OWI charge. The prosecution then sought leave to appeal in the Court of Appeals, and the Court of Appeals reversed, holding that the district court abused its discretion when it held that the Fourth Amendment was violated. Defendant sought leave to in the Supreme Court, and the Supreme Court granted the application, limited to three issues: (1) whether Robinson seized defendant when Robinson pulled his patrol vehicle behind defendant’s vehicle in the driveway; (2) whether defendant impeded traffic in violation of MCL 257.676b(1) when there was no actual traffic to impede at that time; and (3) if not, whether Robinson made a reasonable mistake of law by effectuating a traffic stop of defendant for violating MCL 257.676b(1). **The Supreme Court held that: “[U]sing a marked police vehicle to block a civilian vehicle’s ability to exit a single-lane driveway to facilitate questioning or an investigation is a show of force on behalf of the police that can give rise to a seizure within the meaning of the Fourth Amendment.”** In this case, “defendant was seized under the Fourth Amendment when the officer blocked the driveway and defendant’s path of egress with a marked patrol car because, under the totality of the circumstances, a reasonable person would not have felt free to leave or to terminate the interaction.” *Id.* at _____. Further, the officer did not have a “legally sufficient suspicion of criminal activity” at the time of the seizure. *Id.* at _____. “The stated justification for [the officer’s] encounter with defendant was an alleged violation of [the impeding traffic] statute,” but that statute “is only

violated if the normal flow of traffic is actually disrupted,” and “there is no evidence in the record to sustain the accusation that defendant violated [the statute].” *Id.* at _____. Moreover, “the officer’s mistaken reading of this unambiguous statute was not objectively reasonable, and thus no reasonable mistake of law occurred.” *Id.* at _____. In sum, there was no “lawful justification for the seizure, and the district court did not err by holding that the seizure violated defendant’s constitutional rights.” *Id.* at _____.

[*Stevens v. Michigan State Ct. Admin. Off.*](#), No. 21-1727, 2022 WL 3500193, at *1 (6th Cir. Aug. 18, 2022) (unpublished). This case involves two separate appellants who sued SCAO and the court administrators in Bay and Antrim County because they were not given access to the audio recordings of their proceedings. After appellants lost their state court appeals, they reviewed the transcripts and allegedly noticed that the transcripts contained “substantial errors and misstatements.” Upon review by the Michigan Court Reporting and Recording Board of Review only three typographical errors were found. Appellants requested the audio recordings from their state court proceedings but both court administrators denied the request citing their court’s applicable local administrative orders, which did not permit access to audio recordings. Appellants eventually filed suit in federal court, naming SCAO and the Bay County and Antrim County Administrators. The federal district court found that appellants had no right to access the audio recordings under the First Amendment and found that the Supreme Court’s experience and logic test did not compel granting access to the recordings because there is no tradition of public access to audio recordings. Appellants appealed to the 6th Circuit Court. The 6th Circuit Court considered whether the public disclosure of audio recordings of court proceedings is mandated by the First Amendment under the experience and logic test. The court agreed with the district court that “audio recording devices had not yet been invented when this country adopted the First Amendment” and that the appellants failed to provide any argument on the relevant tradition of openness or the logic prong of the test. **The 6th Circuit researched the matter itself and found “no case establishing the historical availability of audio recordings of court proceedings when a party can attend a trial, receive a transcript, and request the right to record the proceedings themselves.”** The court ultimately held that the appellants “failed to present any argument as to the relevant legal test” and therefore did not show a violation of the First Amendment. Affirmed.