STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v TARAJEE SHAHEER MAYNOR, Defendant-Appellant.	FOR PUBLICATION April 8, 2003 9:15 a.m. No. 244435 Oakland Circuit Court LC No. 2002-185279-FC Updated Copy May 23, 2003

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

WHITBECK, C.J. (*concurring*).

I agree with the majority's conclusion that, assuming first-degree child abuse is a specific-intent crime, there was sufficient circumstantial evidence from which a jury could infer the requisite intent for that crime. I do not agree, however, with the majority's conclusion that first-degree child abuse is a specific-intent crime. Rather, I believe the trial court was correct in its conclusion that first-degree child abuse is a general-intent crime, and I would affirm on that basis.

I. The Reasoning in *Gould*, *Sherman-Huffman*, and *Lerma*

The first-degree child abuse statute provides that "[a] person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child."[1] In interpreting a statute, we must examine its specific language,[2] presume that every word has meaning, and avoid any construction that would render a statute or any part of it surplusage or nugatory.[3]

[1] MCL 750.136b(2).

[2] *People v Pitts*, 216 Mich App 229, 232; 548 NW2d 688 (1996).

[3] *People v Borchard-Ruhland*, 460 Mich 278, 285; 597 NW2d 1 (1999).

The majority cites with approval this Court's opinion in *People v Gould.*[4] There, this Court held that first-degree child abuse was a specific-intent crime.[5] As the majority notes, the *Gould* panel explained its reasoning as follows:

> Black's Law Dictionary (6th ed) defines "knowingly" as: "With knowledge; consciously; intelligently, willfully; *intentionally*" (emphasis supplied). Given the dictionary definition of the word "knowingly" and applying the plain and ordinary meaning of the word to the language of the statute, we conclude that "knowingly" as contained in the statute means the same thing as the word "intentionally." According to the dictionary definition, the words "knowingly" and "intentionally" are synonymous. Thus, we conclude that a specific intent is required under the first-degree child abuse statute. In other words, in order to convict a defendant of first-degree child abuse, it must be shown that the defendant intended to harm the child, not merely that the defendant engaged in conduct that caused harm.[6]

The problem with this analysis, apart from its questionable conflation of the disjoined terms "knowingly" and "intentionally," is its assertion that the appearance of the word "intentionally," or its arguable synonym "knowingly," unambiguously indicates the Legislature's intent to make first-degree child abuse a specific-intent crime. Although this conclusion may be intuitively appealing, a closer look at this Court's varying methods for determining the requisite intent under a given statute reveals that the answer is not so simple. While the *Gould* panel's approach is not entirely unsupported, a diverging line of cases, which I will explore in some depth, holds that the mere presence of certain words is not dispositive in making this determination.

I suggest, therefore, that the dictum in *Gould* is not persuasive. My view on this is somewhat strengthened by subsequent jurisprudential history. This Court in *People v Sherman-Huffman*[7] relied on *Gould* and held that, because the language of the statute governing first-degree child abuse was nearly identical to the language of the statute governing third-degree child abuse, third-degree child abuse was a specific-intent crime. The Supreme Court held that, regardless of whether third-degree child abuse is a specific- or general-intent crime, there was sufficient evidence to convict the defendant of third-degree child abuse.[8] However, the Supreme Court also commented that this Court's finding that third-degree child abuse was a specific-intent

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[4] *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). The majority also notes, correctly, that the Supreme Court classified this Court's conclusion in *Gould* as dictum. See *People v Gould*, 459 Mich 955 (1999).

[5] *Gould*, *supra* at 84-85.

[6] *Id*.

[7] *People v Sherman-Huffman*, 241 Mich App 264, 266; 615 NW2d 776 (2000).

[8] *People v Sherman-Huffman*, 466 Mich 39, 40; 642 NW2d 339 (2002).

crime was dictum.[9] Suffice it to say, if the dictum in *Gould* is unpersuasive, then the dictum in *Sherman-Huffman* is equally unpersuasive. Further, as dictum, the language of these two opinions regarding the nature of first-degree child abuse is not binding precedent.[10]

Similarly, albeit for different reasons, this Court's holding in *People v Lerma*,[11] on which the *Gould* panel relied to a considerable extent, is, in my view, also unpersuasive. That case involved a defendant who argued that his intoxication was a valid defense to his conviction under the "joyriding" statute.[12] That statute made it a crime for any person to "willfully and without authority" take possession of, and drive away, a motor vehicle belonging to another.[13] The *Lerma* panel defined the issue as whether the word "willfully" in the statute denotes a specific intent as a necessary element of the crime.[14] The *Lerma* panel observed that, at the time, there was precious little guidance in Michigan case law regarding the meaning of the term "specific intent."[15] The panel then looked to the language of "several mental states" in "various proposed criminal codes" to suggest that

> specific intent crimes would be limited only to those crimes which are required to be committed either "purposefully" or "knowingly," while general intent crimes would encompass those crimes which can be committed either "recklessly" or "negligently." Thus, in order to commit a specific intent crime, an offender would have to subjectively desire or know that the prohibited result will occur, whereas in a general intent crime, the prohibited result need only be reasonably expected to follow from the offender's voluntary act, irrespective of any subjective desire to have accomplished such a result.[16]

Using this approach, the *Lerma* panel then found that the term "willfully" fell within its definition of a specific-intent crime.[17] First, and most specifically, I note that the *Lerma* decision is, under MCR 7.215(I)(1), not binding precedent. Second, and more generally, the Delphic reference to mental states set out in "various proposed criminal codes" presumably includes the Model Penal Code, which, apart from the fact that it has not been adopted in Michigan, actually takes the view that the term "knowingly" indicates what would have been a *general*-intent crime

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[9] *Id.* at 40 n 2.

[10] *Borchard-Ruhland*, *supra* at 286 n 4.

[11] *People v Lerma*, 66 Mich App 566; 239 NW2d 424 (1976).

[12] MCL 750.413.

[13] *Id*.

[14] *Lerma*, *supra* at 568.

[15] *Id.* at 569.

[16] *Id.* at 569-570.

[17] *Id*. at 570.

at common law.[18] Third, and quite broadly, the *Lerma* panel's suggestion that the words "purposefully" and "knowingly" are, respectively, antonyms for the words "recklessly" and "negligently" is such an opaque dichotomy as to prevent meaningful analysis.

Thus, in my view, neither *Gould*, nor *Sherman-Hoffman*, nor *Lerma* requires a finding that first-degree child abuse is a specific-intent crime. If this is so, we must consider anew the meaning of the words "knowingly" and "intentionally." The majority turns to dictionary definitions. I would turn, at least initially, to relevant case law, as sparse as it might be.

II. General Intent Versus Specific Intent

A. Overview

Specific intent is defined as a particular criminal intent beyond the act done, whereas general intent is merely the intent to perform the physical act itself.[19] As succinctly stated in *People v Herndon*: "A statute that requires a prosecutor to prove that the defendant intended to perform the criminal act creates a general intent crime. A statute that requires proof that the defendant had a 'particular criminal intent beyond the act done' creates a specific intent crime."[20]

B. The Specific-Intent Cases

As then Judge, now Justice, Markman pointed out in *People v Perez-DeLeon*,[21] this Court has vacillated regarding the issue whether the existence of knowledge as an element makes a crime one of specific rather than general intent. There is a line of cases that refers to certain touchstone words, such as "purposefully," "knowingly," "willfully," "purposely," and "intentionally," to signal that the offense is a specific-intent crime. In *People v American Medical Centers of Michigan, Ltd*,[22] the defendants were charged with Medicaid fraud. The elements of the offense are that a person makes a claim to an employee of the state under the Social Welfare Act[23] knowing the claim to be false, fictitious, or fraudulent.[24] Then Judge, now

[18] See *United States v Bailey*, 444 US 394, 405; 100 S Ct 624; 62 L Ed 2d 575 (1980), citing Model Penal Code § 2.02, Comments, p 125 (Tent. Draft No. 4, 1955); LaFave & Scott, Handbook on Criminal Law § 28, pp 201-202 (1972) ("In a general sense, 'purpose' corresponds loosely with the common-law concept of specific intent, while 'knowledge' corresponds loosely with the concept of general intent").

[19] *People v Lardie*, 452 Mich 231, 240; 551 NW2d 656 (1996).

[20] *People v Herndon*, 246 Mich App 371, 385; 633 NW2d 376 (2001).

[21] *People v Perez-DeLeon*, 224 Mich App 43, 55; 568 NW2d 324 (1997).

[22] *People v American Medical Centers of Michigan, Ltd*, 118 Mich App 135; 324 NW2d 782 (1982).

[23] MCL 400.1 *et seq.*

[24] MCL 400.607.

Justice, Kelly, citing *Lerma*, stated that when a statute requires that the criminal act be committed either "purposefully" or "knowingly," the crime is a specific-intent crime.[25]

Similarly, in *People v Ainsworth*,[26] this Court held that the offense of stealing or retaining a financial-transaction device (more commonly known as a credit card) constitutes a specific-intent crime, given that knowledge is an essential part of the crime, because the statute[27] requires that a person "knowingly" commit the offense.[28] Thus, under this line of cases, the *presence* of certain touchstone words in a statute signals the Legislature's intent that the crime is a specific-intent crime.

There are also cases that address the issue from the opposite direction, although using the same touchstone words. In *People v Davenport*,[29] this Court interpreted the carjacking statute[30] and found that the crime of carjacking was not a specific-intent crime. Citing *American Medical Centers* and *People v Norman*,[31] the *Davenport* panel stated, "[w]ords typically found in specific intent statutes include 'knowingly,' 'willfully,' 'purposely,' and 'intentionally.'" The panel then observed that these words were absent from the carjacking statute and therefore found that carjacking was not a specific-intent crime.[32]

Similarly, this Court in *People v Disimone*,[33] cited here by the majority, used the same approach in interpreting the statute that makes it a crime to offer to vote or attempt to vote more than once in the same election, either in the same or another voting precinct.[34] The *Disimone* panel, citing *Davenport*, noted that "the Legislature refrained from using the words 'knowingly,' 'willfully,' 'purposefully' or 'intentionally' in reference to the phrase 'offer to vote,' words typically found in specific intent statutes."[35] The *Disimone* panel concluded that in proving that the defendant made an "offer to vote," the prosecutor was not required to establish that the defendant had a specific criminal intent. Thus, under this line of cases, the *absence* of the same

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[25] *American Medical Centers*, *supra* at 153.

[26] *People v Ainsworth*, 197 Mich App 321; 495 NW2d 177 (1992).

[27] MCL 750.157n(1).

[28] *Ainsworth*, *supra* at 325.

[29] *People v Davenport*, 230 Mich App 577; 583 NW2d 919 (1998).

[30] MCL 750.529a(1).

[31] *People v Norman*, 176 Mich App 271, 275; 438 NW2d 895 (1989).

[32] *Davenport*, *supra* at 580.

[33] *People v Disimone*, 251 Mich App 605; 650 NW2d 436 (2002).

[34] MCL 168.932a(e).

[35] *Disimone*, *supra* at 612.

touchstone words in a statute signals the Legislature's intent that the crime is a general-intent crime.

C. The General-Intent Cases

There is, however, another line of cases, some of which do not rely on the presence or absence of the touchstone words to signal legislative intent. In *People v Lane*,[36] the question was whether the offense of carrying a concealed weapon (CCW) is a specific-intent crime; the defendant argued intoxication as defense and the prosecutor argued, and the trial court agreed, that intoxication is a defense only to a specific-intent crime.[37] The *Lane* panel first noted that the statute itself makes no reference to specific intent; indeed, the statute uses none of the touchstone words.[38] The panel then stated that, while the judiciary has read into the statute an element of knowledge,

> this element of knowledge is [not] the same as a specific intent. It rather reflects the general criminal intent necessary in most crimes. The statute itself does not make any sort of intent necessary for conviction. *The purpose of the element of knowledge is to limit the statute's application to knowing, rather than innocent, violations of the statute's provisions*. . . . Because intoxication is not a defense to the sort of general criminal intent which the knowledge element of the CCW statute reflects, we find no error in the trial court's refusal to allow testimony on the issue of intoxication.[39]

It is fair to conclude, I believe, that had the CCW statute used the touchstone word "knowingly," the *Lane* panel would have reached the same result, for clearly it found that the judicially imposed "knowledge element" was insufficient to convert the crime to a specific-intent crime. Similarly, in *People v Karst*,[40] the Court found that the "knowledge element" is only a general-intent, not a specific-intent, requirement.[41]

Other general-intent cases, however, do refer to some of the touchstone words. In *People v Henry*,[42] for example, this Court construed the statute[43] making the discharge of a firearm in an occupied structure a crime. As in *Lane*, the defendant asserted intoxication as a defense, but the

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[36] *People v Lane*, 102 Mich App 11; 300 NW2d 717 (1980).

[37] *Id.* at 14.

[38] *Id.* at 14 n 1.

[39] *Id.* at 14-15 (emphasis added).

[40] *People v Karst*, 138 Mich App 413; 360 NW2d 206 (1984).

[41] *Id.* at 416.

[42] *People v Henry*, 239 Mich App 140; 607 NW2d 767 (1999).

[43] MCL 750.234b(2).

trial court ruled that the crime in question was a general-intent crime and, therefore, that intoxication was not a defense.[44] However, unlike *Lane*, the discharge-of-firearm statute specifically included the word "intentionally."[45] The *Henry* panel noted that, in *Davenport*, this Court stated that the use of the word "intentionally" is one of those typically included in specific-intent statutes.[46] The panel went on to say:

> However, we do not believe the use of the word "intentionally" in [the discharge-of-firearm statute] indicates that the Legislature intended the offense to require a specific intent. Rather, the use of the word "intentionally" in [the discharge-of-firearm statute] was intended to prevent an innocent or accidental discharge of a firearm in an occupied structure from constituting a crime.[47]

Accordingly, the *Henry* panel held that

> because the statute does not require proof of the intent to cause a particular result or the intent that a specific consequence occur as a result of the performance of the prohibited act, but only requires proof that defendant intentionally discharged the firearm, the trial court correctly concluded that the crime of discharge of a firearm in an occupied structure is a general intent crime.[48]

D. Summary

It is fair to say, I believe, that then Judge, now Justice, Markman's statement that this Court has "vacillated" on how to define general-intent and specific-intent crimes is something of an understatement. Put more bluntly, this Court appears to be marching in two different directions on the issue. We have said that the use of the word "knowingly" signals a specific-intent crime, see *American Medical Centers*. However, we have also said that the "knowledge element" is insufficient to convert a crime to a specific-intent crime, see *Lane* and *Karst.* We have said, or implied, that the word "intentionally" signals a specific-intent crime, see *American Medical Centers*, *Davenport*, and *Disimone.* However, we have also said that the word "intentionally" does *not* signal a specific-intent crime, see *Henry*.

I conclude that, as is occasionally the case in the law, the published opinions of this Court provide two different approaches, or "ladders" of reasoning in Karl Llewellyn's felicitous

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[44] *Henry, supra* at 143.

[45] *Id.*

[46] *Id*. at 144-145.

[47] *Id*. at 145.

[48] *Id.* The *Henry* panel also cited 21 Am Jur 2d, Criminal Law, § 130, p 215, which states that, "[i]n the absence of qualifying provisions, the terms 'intent' and 'intentional' in a criminal statute refer to general criminal intent."

phrase,[49] to dealing with this issue. Under one approach, the presence or absence of certain touchstone words will determine the outcome. Under the opposite approach, the presence or absence of these words alone will not decide the matter. The majority here adopts the first approach; I would adopt the second. Moreover, I reluctantly conclude that the words of the statute governing first-degree child abuse—specifically, the words "knowingly" and "intentionally"—do not, alone, give us sufficient guidance to ascertain the intent of the Legislature. Therefore, I believe that we must turn to certain canons relating to the interpretation of statutes.

III. The History of the Child-Abuse Statute

A. Child Cruelty and Child Torture

The original statutory provisions relating to child abuse were contained in 1931 PA 328. Section 136 of that act provided:

> Any parent or guardian or person under whose protection any child may be, who tortures, cruelly or unlawfully punishes, or *wilfully*, unlawfully or negligently deprives of necessary food, clothing or shelter, or who *wilfully* abandons a child under sixteen years of age, or who habitually causes or permits the health of such child to be injured, his or her life endangered by exposure, want or other injury to his or her person, or cause or permits him or her to engage in any occupation that will be likely to endanger his or her health, or deprave his or her morals or who habitually permits him or her to frequent public places for the purpose of begging or receiving alms, or to frequent the company of or consort with reputed thieves or prostitutes, or by vicious training depraves the morals of such child, shall, upon conviction, be deemed guilty of a felony.[50]

In 1958, the Legislature created a separate crime of child torture. Section 136a of 1958 PA 97 provided that: "Any parent or guardian or person under whose protection or control any child may be, who tortures such child, shall be guilty of a felony . . . ."[51] This act also amended MCL 750.136 to remove the word "tortures," but left the quoted portion of the statute otherwise unchanged.

In 1985, this Court interpreted the child-cruelty statute, MCL 750.136, in *People v Jackson*.[52] Despite the presence of one of the touchstone words, "willfully," the *Jackson* panel

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[49] See Llewellyn, *The Bramble Bush: On Our Law And Its Study* (New York: Oceana Publications) (1960), p 72.

[50] MCL 750.136 (emphasis added).

[51] MCL 750.136a.

[52] *People v Jackson*, 140 Mich App 283; 364 NW2d 310 (1985).

found that specific intent is not an element of the crime of child cruelty.[53] Two years earlier, this Court had interpreted the child-torture statute, MCL 750.136a, in *People v Webb*,[54] and found that it required a showing that a defendant "*intentionally* inflicted extreme, intense, or severe pain or injury upon the victim."[55]

Relying on this precedent, among others, a majority of the panel in *People v Kelley*[56] reached the conclusion that child torture is a specific-intent crime.[57] Visiting Judge Grathwohl, however, dissented. He noted that the decision in *Webb* was based upon dictionary definitions, none of which used the term "intent."[58] He also noted that, under *Jackson*, specific intent is not an element of child cruelty.[59] He then stated that, "[i]f child cruelty is not a specific intent crime and the differentiation between child torture and child cruelty is 'the degree of the severity of the injury inflicted,' . . . one wonders how child torture can be a specific intent crime."[60]

Approximately seven months later, the Supreme Court reversed the decision of the majority in *Kelley* "for reasons stated in its dissent."[61] Thus, I believe it fair to conclude, in the view of this Court in *Jackson,* child cruelty was a general-intent crime, and, in the view of the Supreme Court in *Kelley,* child torture was a general-intent crime. If the matter rested there, I think the outcome in this case would be clear: crimes of this nature against children would be general-intent crimes. However, the matter does not rest there.

B. The 1988 Amendments

Effective September 1, 1988—*after* this Court's decision in *Jackson* and *after* this Court's decision in *Kelley,* but *before* the Supreme Court's reversal in *Kelley*—the Legislature repealed the child-cruelty statute and as the child-torture statute and replaced these provisions with four degrees of child abuse.[62] In so doing, the Legislature used the phrase "knowingly or intentionally"[63] when creating the crime of first-degree child abuse that we consider today. The

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[53] *Id.* at 287.

[54] *People v Webb*, 128 Mich App 721; 341 NW2d 191 (1983).

[55] *Id.* at 727 (emphasis added).

[56] *People v Kelley*, 176 Mich App 219; 439 NW2d 315 (1989).

[57] *Id.* at 222.

[58] *Id.* at 225.

[59] *Id.*

[60] *Id.* at 225-226.

[61] *People v Kelley*, 433 Mich 882; 446 NW2d 821 (1989).

[62] MCL 750.136b; see also *People v Kelley, supra*, 176 Mich App 224 n 2.

[63] MCL 750.136b(2).

Legislature did not use this phrase when creating the crime of second-degree child abuse,[64] but returned to its use when creating the crime of third-degree child abuse.[65]

It is a commonly accepted canon of statutory interpretation that when the Legislature acts in a certain subject area, it is presumed that the Legislature is aware of existing judicial interpretations of words and phrases within that subject area. "The Legislature's silence when using terms previously interpreted by the courts suggests agreement with the courts' construction."[66] Thus, under this canon a court can presume that, when using the phrase "knowingly or intentionally" with respect to first-degree and third-degree child abuse, the Legislature knew that this Court had interpreted the child-cruelty statute to be a general-intent crime but had interpreted the child-torture statute to be a specific-intent crime. It must also be presumed, however, that—since it occurred later in time—the Legislature did *not* know that the Supreme Court would interpret the child torture statute to be a general-intent crime.

If the matter rested there, we might well be at sea. Should we interpret the crime of first-degree child abuse to be more akin to the crime of child cruelty and therefore, despite the use of the phrase "knowingly or intentionally," to be a general-intent crime? Alternatively, should we interpret the crime of first-degree child abuse to be more akin to the crime of child torture and therefore to be a specific-intent crime? I lean to the conclusion, although it is admittedly a close call, that the crime of first-degree child abuse originates mainly from the child-cruelty statute. Frankly, however, the canons of statutory interpretation help us not at all in answering these questions. Fortunately, once again, the matter does not rest there.

C. The 1999 Amendments

In 1999, effective April 3, 2000, the Legislature again amended the child-abuse statute. The amendments did not change the language of the section on first-degree child abuse. However, the amendments changed the section on second-degree child abuse and, at several points, utilized the phrase "knowingly or intentionally."[67] Applying the same canon of statutory interpretation, we can presume that the Legislature was aware of the diverging views of this Court regarding the meaning of touchstone words such as "knowingly" and "intentionally." More to the point, however, we can presume that the Legislature was aware that in *Gould*[68] this Court held the crime of first-degree child abuse to be a specific-intent crime but that, upon review, the Supreme Court classified this holding as dicta.[69] Indeed, I note that the Supreme

[64] MCL 750.136b(3).

[65] MCL 750.136b(4).

[66] *People v Lange*, 251 Mich App 247, 255; 650 NW2d 691 (2002), citing *People v Babcock*, 244 Mich App 64, 74-75; 624 NW2d 479 (2000).

[67] MCL 750.136b(3)(b) and (c).

[68] *Gould*, *supra*, 225 Mich App 79 (1997).

[69] *Gould*, *supra*, 459 Mich 955 (1999).

Court took this action on March 9, 1999, well *before* the Legislature made its changes to the child-abuse statute.

D. Summary

Considering this history in its totality—and to the extent that we are able to read the tea leaves of legislative intent by applying canons of statutory interpretation—I conclude the Legislature's use of the phrase "knowingly or intentionally" with respect to first-degree child abuse did not signal its intent that this was to be a specific-intent crime. Rather, I conclude that the Legislature used this phrase in 1988 knowing that this Court had previously held the child-cruelty statute to be a general-intent crime, and used this phrase again in 1999 knowing that this Court had variously interpreted these and other touchstone phrases to signal both general-intent and specific-intent crimes, but also knowing that the Supreme Court had, earlier in 1999, held that the finding of the *Gould* panel that first-degree child abuse was a specific-intent crime to be dictum.

IV. Conclusion

A careful reader of this opinion will discern a certain skepticism about the process in which courts engage to ascertain legislative intent. I view the use of legislative history—particularly of statements made by legislators in the course of floor debate or staff-generated reports and analyses—to be, at best, a most dubious undertaking. Further, the various judicially constructed canons of interpretation—particularly those that involve making presumptions based upon knowledge imputed to the Legislature—sometimes are so theoretical as to invite exercises in creativity. The canon to which I most wholeheartedly subscribe is the simplest: the Legislature is presumed to have intended the meaning it plainly expressed[70] and when statutory language is clear and unambiguous, judicial construction is neither required nor permitted.[71]

Here, while the words "knowingly" and "intentionally" are simple enough, their meaning is, in context, far from clear and unambiguous. Nonetheless, I believe my conclusion that first-degree child abuse is a general-intent crime to be the correct one. First, I am not persuaded by the analyses in *Gould*, *Sherman-Huffman*, and *Lerma.* My conclusion in this regard is considerably strengthened by the fact that the Supreme Court has twice labeled the specific-intent portions of these analyses to be dicta.

Second, this Court has vacillated on whether the presence or absence of touchstone words such as "knowingly" or "intentionally" signals that the Legislature means to make the crimes at issue to be general-intent or specific-intent crimes; for every *American Medical Centers* there is a *Lane* or a *Karst*, and for every *Davenport* or *Disimone* there is a *Henry*. Consequently, I think the majority errs when it adopts the *Gould* analysis as its own.

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[70] *People v Venticinque*, 459 Mich 90, 99-100; 586 NW2d 732 (1998).

[71] *People v Philabaun*, 461 Mich 255, 261; 602 NW2d 371 (1999).

Third, and finally, I believe that when we view the history of the legislation in this area as a whole—and here I emphasize that I am not referring to "legislative history" in the sense of floor debates or staff reports—this history leads to the conclusion, although it is admittedly a close call, that the crime of first-degree child abuse originates mainly from the child-cruelty statute. Accordingly, and reluctantly applying the presumption of knowledge by the Legislature of the decisions of this Court and the Supreme Court, I believe the trial court was correct in categorizing first-degree child abuse as a general-intent crime, and I would affirm on that basis.

/s/ William C. Whitbeck