

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JASON WILLIAM CATHEY,

Defendant-Appellee.

FOR PUBLICATION

April 6, 2004

9:00 a.m.

No. 244626

Ottawa Circuit Court

LC No. 01-252217

Updated Copy

June 18, 2004

Before: Murray, P.J., and Murphy and Markey, JJ.

MURPHY, J. (*dissenting*).

I respectfully disagree with the majority's reliance on *People v Woods*, 204 Mich App 472; 517 NW2d 239 (1994), and I further disagree with the conclusion that pregnancy constitutes a "bodily injury" within the meaning of Offense Variable (OV 3), MCL 777.33.

In *Woods, supra*, this Court was interpreting the judicial sentencing guidelines promulgated by the Michigan Supreme Court, not a statutory provision enacted by the Legislature such as MCL 777.33. Because a legislative enactment was not involved, the *Woods* panel did not apply the governing rules for statutory construction. In *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002), our Supreme Court stated:

When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. Where the language is unambiguous, "we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written." Similarly, courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature. [Citations omitted.]

Accordingly, we are mandated to interpret the term "bodily injury" pursuant to the rules of statutory construction cited above, and in my opinion, *Woods*, which sought sole guidance

from California law, is not implicated unless an ambiguity is found in MCL 777.33. MCL 769.34(10) permits appellate review of alleged scoring errors, and this Court reviews de novo matters involving statutory construction. *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 157; 627 NW2d 247 (2001).

"Bodily injury" is not defined in OV 3 or anywhere in the legislative sentencing guidelines. Where a term is not defined by the Legislature, it is appropriate to consult dictionary definitions in order to aid in construing the term in accordance with its ordinary and generally accepted meaning. *Stanton v Battle Creek*, 466 Mich 611, 617; 647 NW2d 508 (2002); *Murphy*, *supra* at 158-159; *People v Hill*, 257 Mich App 126, 145; 667 NW2d 78 (2003). As reflected in the majority opinion, Black's Law Dictionary (7th ed) defines "bodily injury" as "[p]hysical damage to a person's body." The *Random House Webster's College Dictionary* (2001) defines "injury" as "harm or damage done or sustained, esp. bodily harm[.]" The recurring theme in both of these definitions is "damage," which is defined as "injury or harm that reduces value, usefulness[.]" *Id.* I cannot and will not equate pregnancy to harm or damage to the body. I agree with the majority's sentiment in footnote five of its opinion, which states "pregnancy is a wonderful event that is celebrated as one of life's greatest gifts." Although I fully recognize the horrific and abhorrent circumstances under which a pregnancy results in criminal sexual conduct (CSC) cases, the creation of a new life, innocent of any wrongdoing, cannot, in my opinion, be relegated to the designation of "damage" unless the Legislature has clearly expressed such an intent. While I find it appropriate to increase the offense variable scoring where a perpetrator has impregnated a victim, the Legislature, and not this Court, must express that sentiment through clear legislation.

The plain and ordinary meaning of "bodily injury" does not encompass a pregnancy. The visceral as well as intellectual reaction of most individuals would not place a correlation between "bodily injury" and pregnancy. This can be seen, for example, where the Legislature has found it necessary to expressly define an injury to include pregnancy as reflected in MCL 750.520a(1) ("Personal injury' means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy . . .")¹ and MCL 18.351(f) ("Personal physical injury' means actual bodily harm and includes pregnancy.")² If the plain and ordinary meaning of "bodily injury" includes pregnancy, I question why the Legislature saw the need to specify in other instances that an injury indeed includes pregnancy. Clearly, the Legislature viewed a need because a pregnancy is not the equivalent of an injury and, here, the Legislature chose not to define "bodily injury" as including pregnancy. I disagree with the majority's conclusion that physical manifestations of pregnancy constitute "bodily injury." Although undoubtedly there are physical manifestations that arise from being pregnant, they are not necessarily injurious or damaging, and they differ from pregnancy to pregnancy and from woman to woman. I conclude that, under a textual reading of

¹ MCL 750.520a pertains to definitions of words used in the CSC statutes.

² MCL 18.351 concerns crime victims' compensation.

the statute, the Legislature did not intend for "bodily injury," as used in MCL 777.33, to include pregnancy.

I would affirm.

/s/ William B. Murphy