

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL E. STAHL,

Defendant-Appellant.

UNPUBLISHED

March 27, 2003

No. 234937

Wayne Circuit Court

LC No. 00-010768

Before: Murphy, P.J., and Markey and R. S. Gribbs*, JJ.

MURPHY, P.J. (*concurring*).

In light of our Supreme Court's decision in *People v Cornell*, 466 Mich 335; 646 NW2d 127 (2002), and this Court's ruling in *People v Alter*, __Mich App__; __NW2d__ (Docket No. 228005, issued January 24, 2003), I conclude that it was improper for the trial court to convict defendant on the offense of third-degree home invasion predicated on the underlying misdemeanor of malicious destruction of property. This offense is not a necessarily included lesser offense of first-degree home invasion, predicated on the underlying felony of felonious assault, as required by MCL 768.32 as that statute has now been interpreted in *Cornell* and *Alter*. For this reason alone, I would reverse defendant's conviction.

/s/ William B. Murphy

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.