

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRELL WILDER,

Defendant-Appellant.

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UNPUBLISHED

October 21, 2008

No. 278737

Wayne Circuit Court

LC No. 07-004454-01

Before: Meter, P.J., and Talbot and Murray, JJ.

METER, J. (*concurring*).

I concur in the majority's conclusion that reversal is required here because, under the Supreme Court's reasoning in *People v Cornell*, 466 Mich 335, 353-357; 646 NW2d 127 (2002), *People v Mendoza*, 468 Mich 527, 532-533; 664 NW2d 685 (2003), and *People v Nyx*, 479 Mich 112, 115, 143; 734 NW2d 548 (2007), a defendant charged only with first-degree home invasion may not be convicted of third-degree home invasion.

However, in my opinion, if a defendant is charged with a crime that is divided into degrees by the Legislature, a conviction of a lesser degree of the charged offense should be allowed, regardless of whether the lesser offense meets the "necessarily included lesser offense" criteria set forth in *Cornell* and *Mendoza*. In this respect, I agree with Justice Corrigan's dissent in *Nyx*. See *Nyx, supra* at 154-161 (CORRIGAN, J., dissenting).

I would urge the Supreme Court to use the present case to revisit the issue regarding "degreed" offenses and to adopt the position of Justice Corrigan – that an "inferior" offense under MCL 768.32(1) includes an offense designated as a lesser-degreed offense by the Legislature.

/s/ Patrick M. Meter