S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED August 26, 2014
v	No. 315670 Van Buren Circuit Court
LEO RAYMOND TERLISNER, Defendant-Appellee.	LC No. 1977-003053-FC

Before: FITZGERALD, P.J., and SAWYER and SHAPIRO, JJ.

SHAPIRO, J. (*concurring*).

I concur with the majority's conclusions because the Michigan Supreme Court has determined that the requirements of *People v Aaron*, 409 Mich 672, 733-734; 299 NW2d 304 (1980), are not to be applied retroactively. Contrary to defendant's argument, *Aaron* did not hold that the common law felony-murder rule was repugnant to the Constitution. Indeed, it did not cite to any constitutional provision as its basis, stating rather that the Court was "exercis[ing its] role in the development of the common law[.]" *Id*. at 733. The Court stated that the new rule would only apply to "trials in progress and those occurring after the date of this opinion." *Id*. at 734. Given that limitation and the lack of any finding of constitutional repugnance, I do not believe that defendant is entitled to relief under MCL 770.1.

I write separately to indicate my disagreement with the majority's view that MCR 6.431 has "superseded" MCL 770.1. The majority's conclusion rests upon reference to a conclusory footnote in *People v McEwan*, 214 Mich App 690, 693 n1; 543 NW2d 367 (1995). The footnote cites *People v Strong*, 213 Mich App 107, 112; 539 NW2d 736 (1995), a case that involved a wholly different statute and a wholly different court rule than does the instant case.[1] It is imprudent for this Court to determine that a statute passed by the Legislature was mere surplusage, particularly where it appears to have been intended to be a mechanism to address miscarriages of justice under specifically defined circumstances. See *People v McGraw*, 484

[1] In *Strong*, this Court held "that pursuant to MCR 6.310(B), [a] trial court may not vacate sua sponte an accepted plea without the defendant's consent." 213 Mich App at 108. The instant defendant's underlying case did not involve a plea bargain nor the application of MCR 6.310(B).

Mich 120, 126; 771 NW2d 655 (2009). In sum, I find nothing in the language of the MCR 6.431 that indicates it was intended to judicially repeal or supersede MCL 770.1.

/s/ Douglas B. Shapiro