STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 18, 2012
v	No. 304045 Wayne Circuit Court
DAMON CURTIS MCFARLAND, Defendant-Appellant.	LC No. 10-010270-FC

Before: SAAD, P.J., and SAWYER and CAVANAGH, JJ.

PER CURIAM.

On September 10, 2010, a jury convicted defendant of two counts of carjacking, MCL 750.529a, two counts of armed robbery, MCL 750.529, fleeing and eluding a police officer, MCL 257.602a(3), carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and felony-firearm, MCL 750.227b. Defendant appeals his convictions of two counts of carjacking. For the reasons set forth below, we affirm defendant's other convictions and sentences, but vacate one carjacking conviction and sentence.

On September 20, 2010, Karl Williams pulled his van into a gas station in Detroit. According to Williams, defendant pointed a gun at him and said "drop all your stuff and get out of your car." Williams complied by getting out of the van, while leaving behind his cell phone, money, and glasses. Defendant also ordered passenger Donald Gayles to get out of the van. Gayles left his money and cell phone and climbed out of the vehicle. Defendant then drove the van away from the gas station, and was caught by police shortly thereafter.

Defendant contends that insufficient evidence supported his two carjacking convictions, but the essence of his argument is a question of law: Whether the jury could convict defendant of two counts of carjacking because he used a threat of violence to order both Williams and Gayles out of the van and then stole the vehicle, or only one count of carjacking because, regardless whether two passengers occupied the van, defendant stole just one vehicle. This issue involves the interpretation of the carjacking statute, and we review questions of statutory interpretation de novo. *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995).

In *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003), Coy Anderson left his car running with a passenger inside. When Anderson returned to his vehicle, the defendant pointed a gun at him, ordered him to get back, and also ordered the passenger to get out of the car. *Id*. The jury convicted defendant of two counts of carjacking because the defendant took the car from

both Anderson and the passenger, and this Court affirmed. *Id*. at 78-79. Our Supreme Court reversed one carjacking conviction and ruled that the carjacking statute in effect at that time allowed for only one carjacking conviction where the defendant stole one motor vehicle from both the driver and a passenger. *Id*. at 80. At the time, the carjacking statute, MCL 750.529a stated, in relevant part:

> A person who by force or violence, or by threat of force or violence, or by putting in fear robs, steals, or takes a motor vehicle as defined in section 412 from another person, in the presence of that person or the presence of a passenger or in the presence of any other person in lawful possession of the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years.

The *Davis* Court noted the difference between the carjacking statute and the armed robbery statute then in effect, MCL 750.529,[1] which would permit multiple convictions of armed robbery if a perpetrator took property from two different people during the same confrontation. *Davis*, 468 Mich at 81-82. The Court reasoned that two armed robbery convictions would be appropriate in that situation because the armed robbery statute focused on the victim assaulted and robbed, while the carjacking statute focused "on the taking of a particular type of property, a motor vehicle, rather than on the person from whom the property is taken." *Id*. at 82.

The current carjacking statute—the one in effect when the crime occurred here—provides, in part:

> A person who in the course of committing a larceny of a motor vehicle uses force or violence or the threat of force or violence, or who puts in fear any operator, passenger, or person in lawful possession of the motor vehicle, or any person lawfully attempting to recover the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years. [MCL 750.529a(1).]

The prosecutor argues that the Legislature changed the focus of the carjacking statute from the stolen vehicle to the victim, which suggests its intent to require multiple convictions if a

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[1] When our Supreme Court issued its decision in *Davis*, the armed robbery statute, MCL 750.529, provided, in relevant part:

> Any person who shall assault another, and shall feloniously rob, steal and take from his person, or in his presence, any money or other property, which may be the subject of larceny, such robber being armed with a dangerous weapon, or any article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon, shall be guilty of a felony, punishable by imprisonment in the state prison for life or for any term of years.

defendant, while stealing or trying to steal a vehicle, uses or threatens force or violence or places in fear more than one occupant of the vehicle which, here, would include both the driver, Williams, and the passenger, Gayles.

"[T]he goal of judicial interpretation of a statute is to ascertain and to give effect to the intent of the Legislature. To do this, we first review the plain language of the statute itself." *People v Koonce*, 466 Mich 515, 518; 648 NW2d 153 (2002). If the language is clear, "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." *People v Morey*, 461 Mich 325, 329-330; 603 NW2d 250 (1999). Only where the statutory language is ambiguous may the Court look outside the statute to determine the Legislature's intent. *People v Kern*, 288 Mich App 513, 516; 794 NW2d 362 (2010).

The prosecutor highlights the Legislature's alteration of the carjacking statute to apply when a person "uses force or violence or the threat of force or violence, or who puts in fear *any* operator, passenger, or person in lawful possession of the motor vehicle, or any person lawfully attempting to recover the motor vehicle." (Emphasis added.) According to the prosecutor, the word "any" shows an intent to broaden the number of victims under the statute, which would permit multiple prosecutions when an owner and passenger or multiple passengers are threatened or placed in fear during a larceny of a vehicle. The prosecutor defines "any" as "each" and "every."

While a court may consult a dictionary to determine the ordinary meaning of undefined words in a statute, *People v Laidler*, 491 Mich 339, 347; 817 NW2d 517 (2012), the prosecutor's definition is unduly narrow. As defined in *Webster's College Dictionary*, "any" may mean "1. one, a, an, or some; one without specification . . . 3. in whatever quantity or number, great or small . . . 4. every; all . . . 7. a single one or ones." *Random House Webster's College Dictionary*, (1997). Thus, the word "any" is not limited to "each" and "every," and does not affirmatively suggest a legislative intent to increase the number of victims for whom a defendant may be prosecuted during "a larceny of a motor vehicle." The more logical reading indicates a legislative intent to broaden the *class* of victims to include an operator, passenger, possessor or person attempting to recover the vehicle, while in no way increasing the *number* of prosecutions permitted for the forcible larceny of a single vehicle. In other words, it does not appear that the Legislature changed the carjacking statute in a way that runs afoul of *Davis*.[2]

Importantly, it is also well-established that "[t]his Court is bound by *stare decisis* to follow the decisions of our Supreme Court." *Griswold Properties, LLC v Lexington Ins Co*, 276 Mich App 551, 563; 741 NW2d 549 (2007). Were we to find that the amended statute called *Davis* into question, this Court may not overrule or modify decisions of the Michigan Supreme Court, even when a statute has been amended that may change the holding of a decision or otherwise render the decision obsolete. *Paige v Sterling Heights*, 476 Mich 495, 523-524; 720

[2] Indeed, the legislative analysis cited by the prosecutor does not address the Legislature's intent regarding the question at issue.

NW2d 219 (2006), citing *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), overruled on other grounds *Karaczewski v Farbman Stein & Co*, 478 Mich 28; 732 NW2d 56 (2007), overruled on other grounds *Bezeau v Palace Sports & Entertainment, Inc*, 487 Mich 455; 795 NW2d 797 (2010). See also *Pellegrino v AMPCO Sys Parking*, 486 Mich 330, 354 n 17; 785 NW2d 45 (2010); *People v Mitchell*, 428 Mich 364, 369; 408 NW2d 798 (1987) ("[a]n elemental tenet of our jurisprudence, stare decisis, provides that a decision of the majority of justices of this Court is binding upon lower courts.").

Accordingly, here, consistent with the carjacking statute and *Davis*, because defendant stole one vehicle, he should have been convicted of and sentenced for a single count of carjacking. Therefore, we vacate defendant's conviction and sentence for one count of carjacking. Defendant having raised no objection to any of his other convictions or sentences, we affirm in all other respects.

Affirmed in part and vacated in part.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Mark J. Cavanagh