

Court of Appeals, State of Michigan

ORDER

People of MI v Westley Wade

Docket No. 307311

LC No. 11-007802-FC

Karen M. Fort Hood
Presiding Judge

Kurtis T. Wilder

Kirsten Frank Kelly
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the November 17, 2011, order of the Wayne Circuit Court granting defendant's motion to suppress the identification evidence hereby is REVERSED. Assuming without deciding that the pre-trial identification was somehow tainted, when the factors to establish an independent basis for an in-court identification of a defendant as the perpetrator are reviewed as a whole, an independent basis for the in-court identification of defendant exists in this case. See *People v Davis*, 241 Mich App 697, 702-703; 617 NW2d 381 (2000). The victim of the armed robbery testified that he was within three feet of the men who robbed him at gunpoint and testified that he made an effort to look at their faces while he was removing his watch, ring and cash. The area was well lit and he had the opportunity to look at their eyes and noses, although their mouths were covered with T-shirts. He testified that he particularly looked at defendant, who was pointing a gun at his face. On the materials presented to this Court, the victim had a sufficient independent basis to support his in-court identification of defendant such that the circuit court should not have granted defendant's motion to suppress. The case is REMANDED to the circuit court for further proceedings consistent with this order.

The motion for stay is DENIED.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

DEC 01 2011

Date


Chief Clerk