

Court of Appeals, State of Michigan

ORDER

People of Michigan v Kenneth Ray Witherspoon, Jr.

William C. Whitbeck
Presiding Judge

People of Michigan v Herbert Jamal Witherspoon

Kathleen Jansen

Docket Nos. 300875; 302711

Kirsten Frank Kelly
Judges

LC No. 2009-001114-FC; 2008-005143-FC

On the Court's own motion, these cases are REMANDED to the Macomb Circuit Court for the purpose of conducting an evidentiary hearing concerning the nature and scope of Samantha Wright's telephonic testimony at defendant Herbert Witherspoon's preliminary examination and the subsequent use of Wright's telephonic testimony at both defendants' trials. Specifically, the circuit court shall take evidence and make findings of fact concerning (1) whether it was actually Samantha Wright who testified via telephone at defendant Herbert Witherspoon's preliminary examination, (2) whether Wright was duly sworn before giving her telephonic testimony at defendant Herbert Witherspoon's preliminary examination, see MRE 603, (3) whether there existed good cause for permitting Wright to testify via telephone at defendant Herbert Witherspoon's preliminary examination, MCR 6.006(B), (4) whether defendant Herbert Witherspoon's attorney had a full and adequate opportunity to cross-examine Wright at the preliminary examination, (5) what steps, if any, were taken to secure Wright's physical presence at both defendants' trials, (6) whether either defendant's counsel ever objected to the use of Wright's preliminary examination testimony at trial, and (7) whether either defendant's counsel, or either of the defendants themselves, expressly consented to the use of Wright's preliminary examination testimony at trial.

The Court orders that these cases are CONSOLIDATED for the purpose of the circuit court's evidentiary hearing on remand only.

The circuit court shall have 63 days from the Clerk's certification of this order to complete the evidentiary hearing in these matters, to issue its written findings of fact, and to transmit those written findings to this Court. Each defendant shall have 35 days from the date the circuit court issues its written findings of fact to submit a supplemental brief to this Court, which shall not exceed 25 pages in length. The prosecution shall have 21 days from the date that either defendant's supplemental brief is filed to respond to that particular defendant's supplemental brief. The prosecution's response brief shall not exceed 25 pages in length with respect to either defendant.

This Court retains jurisdiction in!

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



MAR 16 2012

Date


Chief Clerk