

Court of Appeals, State of Michigan

ORDER

People of MI v Mohamad Kamel Dia

Docket No. 308606

LC No. 11-007051-01-FH

Cynthia Diane Stephens
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

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

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the January 13, 2012, order of the Wayne County Circuit Court, which granted defendant's motion for a new trial, is VACATED and the matter is REMANDED for the trial court to conduct the appropriate analysis. First, the trial court shall determine whether defendant waived any objection to the trial court's failure to sua sponte instruct the jury that he had no duty to retreat, which would extinguish any alleged error. See *People v Kowalski*, 489 Mich 503-505; 803 NW2d 200 (2011) and *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Second, if the trial court rules that there is no waiver, then the trial court shall determine whether defendant established (1) that an error occurred, (2) that the error was plain, and (3) that the plain error affected defendant's substantial rights. *Kowalski, supra* at 505, citing *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). This analysis shall include whether "the plain, forfeited error resulted in the conviction of an actually innocent defendant" or whether the error "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence." *Kowalski, supra* at 505-506, quoting *Carines, supra*.

The trial court shall hear and decide this matter within 28 days of the Clerk's certification of this order, and shall cause a transcript of any hearing on remand to be prepared and filed within 14 days after completion of the proceeding, at the prosecution's expense. The prosecution must forward to this Court copies of any order of the remand proceeding within 7 days after entry, and all transcripts immediately after they are filed by the court reporter. The Court retains jurisdiction.

The motion for stay is GRANTED, and the new trial, which is currently scheduled for March 28, 2012, is STAYED pending completion of the proceedings and further order of this Court.

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



MAR 23 2012

Date


Chief Clerk