

Court of Appeals, State of Michigan

ORDER

People of MI v Jonathan Clifford

Docket No. 309896

LC No. 11-012783-01-FC

Karen M. Fort Hood
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
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 further orders that the April 23, 2012, order, which granted defendant's motion to suppress, is REVERSED. Although the police requested the polygraph examination, defendant, who is 25 years old and attends college, went to the police station accompanied by his mother. Defendant signed and initialed a form, which states that he had the right to refuse or accept the examination, that he had the right to halt the examination at any time, and that he was not required to answer any questions or give any information. Because the trial court never found that defendant did not understand these rights, it cannot be said that defendant reasonably could have believed that he was not free to leave. *People v Coomer*, 245 Mich App 206, 219-220; 627 NW2d 612 (2001). In any event, assuming he was in custody, it is undisputed that defendant was advised of his *Miranda* rights and signed the waiver form, which acknowledged that he was "willing to take a polygraph examination consisting of a testing phase and questioning, before and after." According to the answer, the examination took "nearly" two hours, which encompassed background and pretesting and then the actual test. Under these circumstances, the examiner and the investigator were not required to give defendant additional *Miranda* warnings before asking questions, and defendant's waiver expressly extended to post-examination questioning. See *People v Hicks*, 185 Mich App 107, 113-114; 460 NW2d 569 (1990). And, contrary to the trial court's opinion, *Michigan v Mosley*, 423 US 96; 96 S Ct 321; 54 L Ed 2d 135 (1975), has no application to this case because defendant never invoked his right to remain silent, and therefore, there was nothing for the police to "scrupulously honor." See *United States v Drapeau*, 414 F3d 869, 873 (CA 8, 2005).

The motion to waive production of the transcripts is GRANTED.

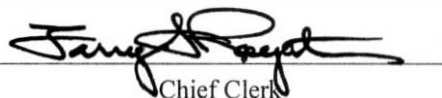
The motion for stay is DENIED AS MOOT. Pursuant to MCR 7.215(F)(2), this Court further directs that this order shall take immediate effect. The Court retains no further jurisdiction.



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

APR 27 2012

Date


Chief Clerk