

Court of Appeals, State of Michigan

ORDER

People of MI v Daniel McCullough

Docket No. 311083

LC No. 11-012362-01-FC

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Cynthia Diane Stephens
Judges

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

The application for leave to appeal is GRANTED, limited to the issues raised in the application. MCR 7.205(D)(4). The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(D)(3).

The motion to waive the stay requirements of MCR 7.209(A)(3) is GRANTED.

The motion for stay is GRANTED. Further proceedings are STAYED during the pendency of this appeal and until further order of this Court.

Murray P.J., and Talbot, J., would but for the unanimity rule reverse the June 12, 2012, suppression orders. Under the objective circumstances of the interview conducted at the Russell Street office, defendant was not in custody and could not have reasonably believed that he was not free to leave. See *People v Mendez*, 225 Mich App 381; 571 NW2d 528 (1997). Defendant arrived at the office (which is not a precinct), accompanied by his girlfriend and her mother, at the request of the police officers after they met at the hospital. There was no testimony that defendant was not given a choice to comply with the request, and he was interviewed at a cubicle and was allowed to leave. That defendant may have been the focus of the investigation and defendant's age and lack of criminal experience are irrelevant. *People v Herndon*, 246 Mich App 371, 395; 633 NW2d 376 (2001); *Yarborough v Alvarado*, 541 US 652, 667-668; 123 S Ct 2140; 158 L Ed 2d 938 (2004). Thus, the failure to give *Miranda* warnings before the interview began did not require suppression. For these same reasons, and because interrogation in a suspect's home is generally viewed as noncustodial, *Miranda* warnings were not required before conducting the video reenactment. *People v Coomer*, 245 Mich App 206, 220; 627 NW2d 612 (2001). Furthermore, the officers were allowed entry into the house, defendant was "quite cooperative" and never asked Tackitt or the officers to leave, defendant's freedom of movement was never restrained, and the officers and Tackitt left once the reenactment was finished.



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

JUL 26 2017

Date


Chief Clerk