

Court of Appeals, State of Michigan

ORDER

People of MI v Devon Terrell Abney

Docket No. **311030; 314871**

LC No. **12-001503-01-FH**

Elizabeth L. Gleicher, Judge, acting under MCR 7.211(C)(7) and MCR 7.211(E)(2),
orders:

The prosecutor's confession of error is accepted, defendant's conviction is REVERSED, and both the initial sentence of probation and the subsequent sentence on the probation violation are VACATED. Since a machete is not a dangerous weapon per se and no evidence was presented to show that defendant carried the machete with the intent to use it as a weapon, the evidence will not support the conviction under MCL 750.227. *People v Brown*, 406 Mich 215, 222; 277 NW2d 155 (1979). Because a sentence for violating probation is a resentencing on the original conviction rather than a separate felony, *People v Hendrick*, 472 Mich 555, 562; 697 NW2d 511 (2005), reversal of the underlying conviction requires that the sentence for the probation violation on appeal in docket no. 314871 also be vacated. These matters are REMANDED to the trial court for enforcement of this order. The Court does not retain jurisdiction.



A true copy entered and certified by Angela P. DiSessa, Acting Chief Clerk, on

JUL 12 2013

Date

A handwritten signature in cursive script that reads "Angela P. DiSessa".
Acting Chief Clerk