

Court of Appeals, State of Michigan

ORDER

People of MI v Matthew Wayne Jones

Docket No. 327053

LC No. 14-010877-FC

William B. Murphy
Presiding Judge

Douglas B. Shapiro

Mark T. Boonstra
Judges

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

Pursuant to MCR 7.205(E)(2), the Court orders that the circuit court's April 24, 2015 order denying the prosecution's motion to allow the testimony of Ronald King is peremptorily reversed because the witness' offer of proof indicates that each of the proffered statements was a party admission made by one defendant and an adoptive admission as to the other based on responsive statements. MRE 801(d)(2)(B). Furthermore, the witness' memory problems are not a proper basis for disallowing his testimony because that is a matter of credibility, and lack of memory does not deny a defendant's right of confrontation or the right to cross-examination. See *People v Watson*, 245 Mich App 572, 584-585; 629 NW2d 411 (2001). Our ruling is without prejudice and the issue may be raised on appeal by either defendant, if convicted, at which time the reviewing court may consider the issue based on the actual testimony heard by the jury and in the context of the entire trial.

This Court retains no further jurisdiction.

BOONSTRA, J. concurs, for the further reason that the statements at issue do not appear to be "offered in evidence to prove the truth of the matter asserted," MRE 801(c), or therefore to constitute "hearsay."



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR 29 2015

Date


Chief Clerk