

Court of Appeals, State of Michigan

ORDER

People of MI v Miguel Angel Martinez

Docket No. 339904

LC No. 17-003145-01-AR

Michael J. Riordan
Presiding Judge

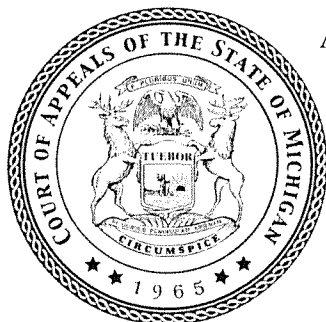
Michael J. Talbot

Kirsten Frank Kelly
Judges

The Court orders that the motion for peremptory reversal pursuant to MCR 7.211(C)(4) is GRANTED. The trial court's factual finding that the fifteen-minute observation period of Mich Admin Code, R 325.2655(1)(e) was satisfied was not clearly erroneous. *People v Dunbar*, 499 Mich 60, 66; 879 NW2d 229 (2016). The reviewing court must "defer to the trial court's superior ability to observe and assess the credibility of the persons who . . . actually appeared before it." *People v Thompson*, 314 Mich App 703, 720; 887 NW2d 650 (2016); *People v Dagwan*, 269 Mich App 338, 342; 711 NW2d 386 (2005). There existed evidence that for fifteen minutes before the test was administered, defendant was under observation and he did not smoke, regurgitate, or place anything in his mouth during the period of observation. The Wayne Circuit Court's August 15, 2017 order, granting defendant's motion to suppress the results of the DataMaster test is REVERSED, and this matter is REMANDED to the trial court for further proceedings.

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



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

DEC 19 2017

Date


Chief Clerk