

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES JOEL RICHARDS,

Defendant-Appellant.

UNPUBLISHED

June 28, 1996

No. 175607

LC No. 93-009325

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

PER CURIAM.

Defendant appeals as of right a jury trial conviction for breaking and entering an automobile with intent to steal, MCL 750.356a; MSA 28.588(1), and his plea of guilty to third habitual offender, MCL 769.11; MSA 28.1083. Defendant was sentenced to 2 ½ to 5 years' imprisonment for the breaking and entering conviction. That sentence was vacated in favor of a 2 ½ to 10 year sentence for the third habitual offender conviction.

Defendant argues that the trial court erred in admitting evidence of an anonymous, non-testifying informant's description of the suspect to police. We agree. Defendant objected to the admission of the evidence in the lower court. He argued at trial and on appeal that such evidence was inadmissible as hearsay.

The Michigan Supreme Court has held that it is error to allow an officer to testify concerning statements and descriptions by an informant which led police to investigate a crime. In *People v Wilkins*, 408 Mich 69, 72-73; 288 NW2d 583 (1980), the Court held that while evidence of a suspect's description as given by an unsworn, nontestifying informant may not be hearsay if it is not offered by the prosecution to prove the truth of the informant's statements but rather to explain the police officer's subsequent actions, the state of mind of the officer in such a case is not a fact of consequence to the determination of the action and is, therefore, inadmissible under MRE 401. The Court also indicated that such statements were far more prejudicial than probative, and thus inadmissible under MRE 403. For this reason, it is error to admit such statements.

* Circuit judge, sitting on the Court of Appeals by assignment.

In the present case, following the admission into evidence of the informant's statement, much of the testimony from police focused on the similarities between the informant's substantive description and defendant's appearance. Under these circumstances, it is unclear whether the informant's statement was admitted to prove the truth of the matter asserted or for some other purpose. In any event, we conclude that it was error to admit the informant's description to police and that the error was not harmless because there is "a reasonable probability that the error affected the outcome of the trial." *People v Hall*, 435 Mich 599, 609 n 8; 460 NW2d 520 (1990); *People v Hubbard*, 209 Mich App 234, 243; 530 NW2d 130 (1995). In view of our disposition, we find it unnecessary to address the other issues raised by defendant.

Reversed and remanded for a new trial.

/s/ Richard Allen Griffin

/s/ Richard A. Bandstra

/s/ Meyer Warshawsky