

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 184692

Kent Circuit Court

ASBERRY DONELL DANIELS,

LC No. 94-002834-FC

Defendant-Appellant.

Before: Bandstra, P.J., and Hoekstra and J.M. Batzer*, JJ.

BANDSTRA, P.J. (concurring).

Although I agree with the reasoning and result of the lead opinion, I find its reliance on *People v Morrow*, 214 Mich App 158; 542 NW2d 324 (1995) to be misplaced. *Morrow* involved a separation of powers question: whether a prosecutor may proceed with a case after the chief witness has recanted an inculpatory account of the alleged crime or, instead, whether the case may be sua sponte dismissed by the court. The defendant in *Morrow* did not raise the constitutional issues raised by defendant in the present case. Further, in *Morrow*, the recanting witness would apparently have been available for the defendant to call at trial. In contrast, defendant's arguments in the present case are based on the fact that Ward would not testify at trial.

/s/ Richard A. Bandstra

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