

Order

Michigan Supreme Court
Lansing, Michigan

December 13, 2019

Bridget M. McCormack,
Chief Justice

158578

David F. Viviano,
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 158578
COA: 338400
Calhoun CC: 2016-001379-FH

MICHAEL BRIAN McJUNKIN,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the August 28, 2018 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE Part II of the judgment of the Court of Appeals, and we REMAND this case to the Calhoun Circuit Court for an evidentiary hearing to determine whether the consent or the plain view exceptions to the warrant requirement justify the warrantless search and seizure in this case. Specifically, the court shall determine: (1) whether, based on an assessment of the totality of the circumstances, consent was freely and voluntarily given, see *People v Borchard-Ruhland*, 460 Mich 278, 294 (1999); (2) whether an objectively reasonable officer would conclude that the homeowner had actual or apparent authority to consent to a search of the vehicle that the defendant had driven into the garage, see *People v Mead*, 503 Mich 205, 216-219 (2019); and (3) whether, assuming the officers were lawfully in the garage, the items seized from the vehicle were visible and their incriminating character was immediately apparent, see *People v Champion*, 452 Mich 92, 101 (1996). In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 13, 2019

Clerk