

Court of Appeals, State of Michigan

ORDER

People of MI v Jerome Tookes

Docket No. 311558

LC No. 11-010421-FH

Kirsten Frank Kelly
Presiding Judge

Christopher M. Murray

Michael J. Riordan
Judges

The principal issue on appeal is defendant's challenge to the trial court's order denying his motion to suppress without an evidentiary hearing. The trial court ruled that, accepting as true that defendant was an overnight guest at Jackson's house, he did not have a protected privacy interest in the bedroom where the gun was located because he resided in a different area of the house. This ruling was in error, as it is well-settled that "an overnight guest at a residence had a legitimate expectation of privacy protected by the Fourth Amendment and that that expectation conferred standing to challenge a nonconsensual entry into a residence... ." *People v Parker*, 230 Mich App 337, 340; 584 NW2d 336 (1998), citing *Minnesota v Olson*, 495 US 91; 110 S Ct 1684; 109 L Ed 2d 85 (1990). Hence, absent the consent of the homeowner (and that is a contested factual issue), and absent a finding that defendant was a mere visitor as opposed to an overnight guest, the trial court's ruling that defendant's protected interest did not extend to the entry into the residence or the bedroom was in error. See *id* and *United States v Berryhill*, 352 F 3d 315, 317-318 (CA 6, 2003) and *United States v Aguire*, 664 F3d 606, 609 n1 (CA 5, 2011).

As a result of the trial court's erroneous ruling, numerous fact issues must be decided by the trial court after an evidentiary hearing, including whether the homeowner consented to the police officers' warrantless entry into the home and whether defendant was an overnight guest or mere visitor to the home. We therefore REMAND this case to the trial court for an evidentiary hearing on defendant's motion to suppress. Proceedings on remand in this matter shall commence within 35 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded.

The trial court shall make findings of fact and conclusions of law either in writing or on the record. The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

The parties may file supplemental briefs, not to exceed five pages, addressing the trial court's findings and conclusions, no later than 14 days from the filing of the trial court's findings and conclusions with this Court.

We retain jurisdiction.

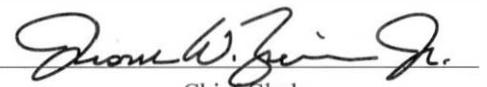

Presiding Judge



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

DEC -5 2013

Date


Chief Clerk