

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANDREW SIMONI,

Defendant-Appellee.

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UNPUBLISHED

June 12, 2003

No. 239894

Wayne Circuit Court

LC No. 01-007273

Before: Talbot, P.J., and Neff and Kelly, JJ.

TALBOT, P.J. (*concurring in part and dissenting in part*).

I concur with the majority on all respects save the remand for a determination whether defendant voluntarily consented to the search. The majority fails to recognize that the reason the lower court record does not contain evidence of the *Louis* factors is because defendant never claimed that his consent for the search was involuntarily given. Defendant sought to suppress the evidence on the ground that it was obtained in violation of his Fifth and Seventh Amendments rights. Specifically, defendant argued that the evidence should be suppressed because the officers obtained the consent to search *before* giving defendant his *Miranda* warnings. Because defendant did not argue below that the consent to search was involuntarily given, in violation of the Fourth and Fourteenth Amendments, a remand with respect to this matter is inappropriate.

/s/ Michael J. Talbot