

Order

Michigan Supreme Court
Lansing, Michigan

March 31, 2010

Marilyn Kelly,
Chief Justice

138875 & (17)(19)

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 138875
COA: 290336
Oakland CC: 2005-203484-FH

JACOB TRAKHTENBERG,
Defendant-Appellant.

By order of December 30, 2009, the prosecuting attorney was directed to answer the application for leave to appeal the March 20, 2009 order of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted. On remand, while retaining jurisdiction, the Court of Appeals shall remand this case to the Oakland Circuit Court to conduct an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436 (1973), to determine whether the defendant was deprived of his right to the effective assistance of counsel and whether the defendant is entitled to a new trial based on newly discovered evidence. At the conclusion of the hearing, the circuit court shall forward the record and its findings to the Court of Appeals, which shall then resolve the issues presented by the defendant. The motion to withdraw is DENIED, without prejudice to defense counsel filing a motion to withdraw in the circuit court.

We do not retain jurisdiction.



s0324

I, Corbin R. Davis, 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.

March 31, 2010

Corbin R. Davis

Clerk