

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee.

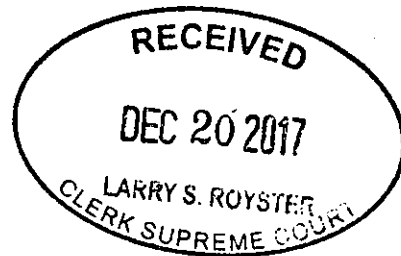
v.

Supreme Court No. 156720
Court of Appeals No. 332500
Trial Court No. 10-1241-FH

RAYMOND C. PIERSON,
Defendant-Appellant.

Washtenaw County Prosecutor
Attorney for Plaintiff
Brian Mackie (P25745)
P.O. Box 8645
Ann Arbor, MI 48107

Raymond C. Pierson, #370457
Defendant In Pro Per
Thumb Corr. Facility
3225 John Conley Drive
Lapeer, MI 48446



DEFENDANT'S REPLY TO PLAINTIFF-APPELLEE'S ANSWER TO
APPLICATION FOR LEAVE TO APPEAL

NOW COMES, Defendant Raymond Pierson, pursuant to MCR 7.305(E),
proceeding in propria persona, moving this Honorable Court to consider the
defendant's reply to Plaintiff-Appellee's Answer to Application for Leave
To Appeals.

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COUNTERSTATEMENT OF QUESTION PRESENTED

I. The Michigan State police "Laboratory Report," Laboratory No. NV10-8649 under investigator Sean Urban did reveal that "no latent prints" belonging to the defendant were found on the AK-47 or any of the "77 rounds" that the prosecution claims that defendant brought to the scene. At trial the court informed the jury of the existence, nature and result of a pre-trial suppression hearing which crippled defendant's ability to challenge the alleged statement and the circumstances under which the alleged statement was made. The court's comments did hinder defendant of his right to familiarize the jury with the circumstances and facts surrounding the taking of the alleged statement. Were the defendant's rights to due process violated by the trial court?

Defendant-Appellant answer, "YES"
Plaintiff-Appellee answer, "NO"

II. The Michigan Court of Appeals issued an ORDER on August 29, 2016 for the prosecutor to file an Appellee's Brief in response to Defendant-Appellant within 56 days as directed in MCR 6.509(D), or within the time stated in MCR 7.212(A)(2)(a). The prosecutor did fail to comply with the Michigan Court of Appeals order to respond. Under MCR 2.111(E)(1) whenever a responsive pleading is required, a failure to explicitly deny an allegation constitutes an admission. The defendant's allegations do fall within in the parameters of MCR 2.111(E)(1). Thus the prosecution has conceded and procedurally defaulted by failing to comply with the Michigan Court of Appeals ORDER. Did the prosecution concede their violations of the Defendant's Rights To Due Process?

Defendant-Appellant answer "YES"
Plaintiff-Appellee answer, "NO"

ARGUMENT

ISSUE II

DEFENDANT'S STATE AND FEDERAL RIGHTS TO DUE PROCESS WERE VIOLATED DEPRIVING DEFENDANT OF A FAIR TRIAL. WHEN THE COURT INFORMED THE JURY OF THE EXISTENCE, NATURE AND RESULTS OF A PRE-TRIAL SUPPRESSION HEARING CONCERNING THE ADMISSIBILITY OF AN ALLEGED STATEMENT.

It is well settled that the trial court should not comment on the fact that the defendant's statement had already been held admissible. People v. Michaux, 1997 Mich. App. LEXIS 3329. It is also well settled that the trial court improperly impinges on the province of the jury by supplying information concerning existence, nature and results of a walker hearing. People v. Gilbert, 55 Mich. App. 168; 222 N.W. 2d 305.

In the instant case the trial court made a statement during trial stating: "The court already held a hearing on this matter, and I have ruled that the defendant was properly advised of his rights and that the statement that have been introduced are admissible." (T.T. Vol. 2 pg. 28 lines 9-14) This statement by the court was not only a violation of the defendant's right to a fair trial, but was also a direct misapplication of law expressed in Gilbert, supra. Generally, Trial court's misapplication of law is an abuse of discretion. Bynum v. ESAB Group Inc, 467 Mich. 280, 283; 551 N.W. 2d 383 (2002). The jury was informed of the existence, nature and result of the defendant's pretrial Walker hearing, thus improperly impinged on the jury's province.

The prosecutor claims that "the court's limitations of defense counsel's questioning in no way prevented Defendant from challenging whether Defendant's statement was actually made." This is false. Defendant counsel was attempting to challenge the statement when it was shot down by the court. The Court of Appeals in its opinion even stated that "the trial

court's conduct insofar as it is discernible from the transcript, suggests that any further efforts by counsel would have been futile or counterproductive."

This improper conduct of the trial court did hinder the ability of the defendant to challenge the alleged confession as well as the circumstances surrounding the taking of it. The trial court's comments made it impossible to familiarize the jury with the circumstance that attended the taking of this alleged confession, which is the defendant's right to do. Lege v. Twomey, 404 U.S. 477; 92 S.Ct. 619; 30 L.Ed.2d 618 (1972). A properly preserved error that crippled the defendant's ability to challenge a confession cannot, be deemed harmless. Gilbert, supra.

Next the prosecutor in his answer to defendant's Application for Leave to Appeal states that "there was ample evidence admitted relating to the content of Defendant's statement and the fact that he had not been advised of his Miranda rights when the statement was made." (pg 9) A prosecutor, prior to the admission of a defendant's statements at trial, must first make an affirmative showing that Miranda warnings were given to the defendant and that a waiver was properly obtained. People v. Arroyo, 138 Mich. App. 246; 360 N.W. 2d 185 (1984). The prosecution in its answer to defendant's Application for Leave to Appeal not only admits that the defendant had not been advised of his rights pursuant to Miranda warnings being given, but also that he did not make an affirmative showing that Miranda warnings were given to the defendant and that a waiver was properly obtained. It is the duty of the court, to check and control any intemperance of zeal or language that is not warranted by the facts and circumstance shown by proof. People v. Plavtz, 28 Mich. App. 621; 184 N.W. 2d 761 (1970). Statement by an accused during custodial interrogation must be preceded

by Miranda warning of accused's constitutional rights as prerequisite to admissibility therefore at subsequent criminal trial. People v. Scanlon, 74 Mich. App. 186; 253 N.W. 2d 704 (1977).

Michigan Rules of Evidence # 1002 provides: To prove the content of a statement, the original is required. In the instant case the prosecution has failed to adhere to the rule. It is well settled that signed confessions... provide evidence of a defendant's guilt. U.S. v. Redditt, 87 Fed. Appx. LEXIS 10317 (6th Cir.) Again, the prosecution has failed to provide the actual original signed confession. All of this is prima facie evidence that the prosecutor has failed to meet the burden of establishing, beyond a reasonable doubt that the defendant was ever advised of his rights under Miranda, that the defendant ever made the alleged confession, or that the defendant's State and Federal constitutional rights to due process were not violated.

The prosecution has admitted that the defendant's rights to due process were violated because the defendant was not advised of his Miranda rights. Any inferences made by the prosecutor must be warranted by the evidence. U.S. v. Young, 470 U.S. 1; 105 S.ct 1038; 84 L.Ed.2d 1 (1985). The prosecutor has shown through his own admission that he could not possibly provide the original to prove the content of the alleged statement as required by MRE 1002, because the defendant was never advised of his Miranda rights. It is also improper for a prosecutor during closing arguments to bring to the jury any purported facts which have not been introduced into evidence and which are prejudicial. Byrd v. Collins, 209 F.2d 486, 535; 2000 U.S. App. LEXIS 6266 (6th Cir.). This is exactly what was done by the prosecutor in the instant case. See (Closing Argument T.T. Vol. 2 pg 117).

The Michigan Supreme Court has determined that when it becomes apparent that the reasoning of an opinion is erroneous, it becomes the duty of the Court to correct it. People v. Lukity, 460 Mich. 484; 596 N.W. 2d 607 (1999). The Court of Appeals and the prosecution have both acknowledged "the fact that" defendant "had not been advised of his Miranda rights when the statement was made." This fact makes this alleged statement an involuntary confession. The defendant's constitutional rights have been violated if his conviction is based in whole or in part on an involuntary confession, regardless of the truth or falsity. Miranda v. Arizona, 384 U.S. 436; 86 S.Ct 1602; 16 L.Ed.2d 694 (1966). This is even so if there is ample evidence aside from the confession to support the conviction. Whether his conviction was in federal or state court, the defendant may secure a post-conviction hearing based on the alleged involuntary character of his confession. Miranda, supra.

All of the above facts show that the Court of Appeals determination that these errors are harmless is in error and is an abuse of discretion. Therefore the defendant's conviction should be overturned.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, Defendant-Appellant prays that this Honorable Court vacate his conviction and sentence and remand this case for a new trial.

Respectfully submitted,



Defendant-Appellant,
In Pro Per
Thumb Corr. Facility
3225 John Conley Dr.
Lapeer, MI 48446

Dated: December 14, 2017

Exhibit A



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
FORENSIC SCIENCE DIVISION

Northville Laboratory
42145 W. Seven Mile Rd
Northville, MI 48167
(248) 380-1000
FAX (248) 380-1005

LABORATORY REPORT

Laboratory No. : NV10-8649
Investigator : Sean Urban
Agency : Washtenaw County Sheriff Department
Agency No. : 10-5267

Record No. : 1
Date Received : August 10, 2010
Time Received : 6:39 a.m.
Date Completed : October 4, 2010

Nature of Offense:

2200-1 - Burglary Forced Entry

Suspect:

Raymond Charles Pierson Jr M DOB 9/7/1973 SID# 1757688L

Evidence Received:

- Container #1
Item #1a 1 - Tape-sealed plastic bag (tag #77969) containing:
1 - 7.62 X 39mm caliber CN Romarm, semiautomatic rifle, stamped "LM-2108-69"
- Container #2 1 - Tape-sealed white envelope (tag #77968) labeled as containing "77 Rounds" (not opened/processed)

Processing Results:

Item #1a was processed with no latent prints being developed.

The label on container #2 indicates the enclosed items are cartridges. These do not meet the submission criteria for latent print analysis.

Disposition of Evidence:

Item #1a was turned over to the Firearms/Toolmarks Unit on 10/4/2010 for further analysis.

Relevant Supporting Data:

Documented latent prints (through photography or lifting) and known finger and palm impressions.

Relevant supporting data is case specific and not all of the above may be applicable in every case.

Tracee McIntosh
Tracee McIntosh
Forensic Scientist
Latent Print Unit

Nicole Bock
Nicole Bock
State Police Specialist/Trooper
Latent Print Unit

October 4, 2010

The relevant supporting data upon which the expert opinion or inference was made are available for review/inspection.

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PEOPLE OF THE STATE OF MICHIGAN,
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Supreme Court No. 156720
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Trial Court No. 10-1241-FH

RAYMOND C. PIERSON,
Defendant-Appellant.

STATE OF MICHIGAN)
)SS:
COUNTY OF LAPEER)


PROOF OF SERVICE

I, Raymond C. Pierson, being sworn, say on 12-14-2017, I served a copy of Appellant's Application for Leave to Appeals; Brief in Support of Application for Leave to Appeals; Proof of Service to:

Brian L. Mackie (P25745)
Attorney for Plaintiff
200 N. Main Street, Suite 300
Ann Arbor, MI 48104

By placing a copy of same in a sealed envelope with first-class postage fully prepaid addressed and deposited in the United States mail.

Dated: December 14, 2017


Raymond C. Pierson, #370457
Defendant In Pro Per.

Raymond C. Pierson, #370457
Thumb Corr. Facility
3225 John Conley Dr.
Lapeer, MI 48446

=====

December 14, 2017

Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: PEOPLE v. RAYMOND C. PIERSON
Supreme Court No. 156720
Court of Appeals No. 332500
Trial Court No. 10-1241-FH


Dear Clerk,

Enclosed for filing in your Court, please find the original and one copy of the following: Defendant's Reply To Plaintiff-Appellee's Answer To Defendant's Application For Leave To Appeal.

Please file in your usual manner. Thank you for your assistance in this matter.

cc: Washtenan County Prosecutor

Sincerely,



Raymond C. Pierson
Defendant In Pro Per

