

Order

Michigan Supreme Court
Lansing, Michigan

April 19, 2024

Elizabeth T. Clement,
Chief Justice

164708

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 164708
COA: 353296
Macomb CC: 2005-003245-FC

ANTHONY JEROME DeLEON,
Defendant-Appellant.

By order of October 20, 2023, while retaining jurisdiction, we remanded this case to the Macomb Circuit Court for further proceedings. On order of the Court, the trial court decision on remand having been received, the application for leave to appeal the June 23, 2022 judgment of the Court of Appeals is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE that part of the judgment of the Court of Appeals concluding that trial defense counsel was not ineffective and REMAND this case to the Macomb Circuit Court for a new trial. The trial court found that defense counsel's testimony was not credible and that his decision to not call expert witness Herbert MacDonell, Sc.D., was deliberate but unreasonable. The record does not reveal any reasons overcoming the trial court's superior ability to evaluate witness testimony such that its findings of fact could be called clearly erroneous. See MCR 2.613(C). In addition, contrary to the Court of Appeals majority's conclusion, the defendant has shown a reasonable likelihood of a different trial result but for the failure to call MacDonell as a witness. The proposed expert's testimony would not have harmed the defense case in any appreciable way, but rather would have provided a concrete explanation of the decedent's death as a suicide rather than a homicide. 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.

April 19, 2024

Clerk