

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
January 9, 2018

v

KEVIN DEANDRE WARE,
Defendant-Appellant.

No. 333988
Kalamazoo Circuit Court
LC No. 2015-001179-FC

Before: SWARTZLE, P.J., and SAWYER and MARKEY, JJ.

SAWYER, J. (*concurring in part and dissenting in part*).

I do not disagree with the majority's conclusion that defense counsel should have formally renewed the motion to suppress defendant's statements or, in the alternative, that the trial court should have considered defense counsel's verbal motion to do so made on the first day of trial. Similarly, the trial court should not have declined to hold a hearing on defendant's request for a hearing on his claim of ineffective assistance of counsel.

Where I disagree with the majority is its decision to proceed to deciding the substantive issue regarding the suppression of those statements, reversing defendant's conviction, and ordering a new trial. I believe that such decisions are best made in the first instance by the trial court. Accordingly, I would remand for a hearing on defendant's claim of ineffective assistance of counsel or, in the alternative, for the trial court to substantively address the verbal motion by defense counsel to suppress defendant's statements rather than denying it as untimely.

/s/ David H. Sawyer