

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v.

Case No: 93-004008-01-FC
Hon. Paul John Cusick

ROGER CARLOS RAY,

Defendant.

**OPINION AND ORDER GRANTING
RELIEF FROM JUDGMENT AND A NEW TRIAL**

At a session of Court held at the Criminal Justice
Center in the City of Detroit, Wayne County,
Michigan, on: May 11, 2026

PRESENT: Hon. Paul John Cusick

This case comes before this court on remand from the Michigan Court of Appeals and has been reassigned to this court after the case was remanded. The Court of Appeals vacated the previous trial judge's order denying defendant's relief from judgement and directed this court to hold an evidentiary hearing on whether the newly discovered evidence satisfies the fourth prong under the test laid out in *People v. Cress*, 468 Mich. 678, 692 (2003), and/or whether the evidence is considered material evidence under *Brady v. Maryland*, 373 U.S. 83 (1963).

PROCEDURAL BACKGROUND

Defendant Roger Carlos Ray was found guilty on November 12, 1993, of first-degree premeditated murder, MCL 750.316(1)(a), first-degree felony murder, MCL 750.316b(1)(b), and felony-firearm, MCL 750.227b. He was sentenced on December 6, 1993, to life without the possibility of parole, consecutive to two years on the felony-firearm.

The Michigan Court of Appeals affirmed defendant's convictions on an appeal of right on February 27, 1996, in *People v Ray*, unpublished per curiam opinion (Docket No. 172243), and the Michigan Supreme Court denied defendant's leave to appeal in *People v Ray*, 454 Mich 853 (1997).

On January 31, 2002, the trial court denied defendant's first motion for relief from judgement and the Michigan Court of Appeals and the Michigan Supreme Court both denied his application for leave to appeal. On April 29, 2009, the trial court denied defendant's second motion for relief from judgement and the application for leave to appeal was denied again by the Michigan Court of Appeals and then by the Michigan Supreme Court.

Defendant then filed a third motion for relief from judgement on August 18, 2018, which was subsequently denied in an order and opinion issued on November 17, 2022. On April 28, 2023, defendant filed a delayed application for leave to appeal, and after granting leave, the Michigan Court of Appeals remanded the case to this court for an evidentiary hearing.

An evidentiary hearing was held on November 26, 2025, in which Jason Mitchell and Scott Mischnick testified. Oral arguments were heard on January 9, 2026 and there was an evidentiary hearing continued regarding DNA testing on February 26, 2026.

FACTUAL BACKGROUND

This case involved the murder of John Holmes on April 19, 1987, in Detroit. The main witness against Ray was Edmond Wright. There were other witnesses who testified, including Wright's girlfriend, Lisa Shepard. The evidence presented showed that Holmes was killed by blunt force trauma to the head and a single gunshot wound. Holmes was killed in an apartment building and his body was charred and found in the building's boiler room on April 21, 1987.

Holmes was the assistant manager of the apartment building and was known for lending money at a high rate of interest to the building's residents. Defendant lived with Wright and Shepard in the same apartment and sold narcotics at the apartment.

On the day in question, Wright and Shepard were away from the apartment celebrating Easter at his mother's residence but returned to the apartment to retrieve a jacket for Shepard. Wright then went inside the apartment building while Shepard and Wright's mother remained in the car. When he arrived he observed defendant at the door with blood all over him and he was shirtless and sweating. Wright entered the apartment and saw a safe on the floor. Wright recognized the safe as belonging to Holmes because he had previously seen it at Holmes' apartment. In the bedroom of the apartment Wright noticed brain matter and blood.

Defendant was in the apartment with another man who had a gun and defendant himself had a gun and defendant told Wright he had to sit down. Shepard testified that she waited 5-10 minutes and then went inside the apartment building to get Wright, Wright testified it was 40-45 minutes. According to Shepard, per her statement, defendant told her that Wright would be out with her coat and Wright yelled (though she didn't see him) to go back to the car. Wright did not testify that he said anything to Shepard. Defendant in this case notes that the weather was 75 degrees at 7 PM that night and defendant claims there was no need for Wright to get a coat for Shepard.

Wright testified that he helped defendant move the safe and other things from the apartment to the dumpster in the back of the apartment building and that defendant admitted to him that he had hit Holmes in the head and shot him twice. In the apartment defendant told Wright to clean up everything and Wright proceeded to do as directed. Defendant told Wright not to say anything to the police and that they would meet up later at a Coney Island restaurant and defendant would give Wright some money to not say anything. Wright did not see Holmes on April 19th but believed he had been killed. He went to the car and told Shepard and his mother that something had happened in the apartment when they had gotten back to his mother's house.

Shepard testified that the next morning Wright left for work, but Wright testified he didn't remember if he went into work that day and Shepard did not know for certain if he did since he just left his mother's house and she didn't follow him.

Both Wright and Shepard went back to the apartment the next day, Monday, April 20th. Both Wright and Shepard testified that defendant's clothing was gone and Wright testified some of his clothing was missing as well. Wright testified that the apartment curtains were missing as well as bedding, but Shepard testified she didn't notice anything different about the apartment.

Wright called Clarence Bell, the apartment building owner, on April 21st, telling Bell that he could not find Holmes. Bell went looking for Holmes and discovered his body, which appeared charred, with the skin burned off of his face in the apartment building's boiler room.

The police began an investigation and interviewed Wright, who was cooperative and made several statements to law enforcement. Wright consented for law enforcement to search the apartment. Wright claimed that all of the statements that he gave the police were true. In his first statement, given on April 21, 1987, at the apartment building, Wright told police that he worked part-time at the building and was looking for Holmes to see if anything needed to be cleaned. He said that he was worried about Holmes so he called Bell. In response to being asked by police whether he saw Holmes on Saturday or Sunday, Wright said that he was at his mother's house and returned on Monday. He further stated that he went to Holmes' apartment where his door was closed and he heard the television was on but did not hear anything else.

Wright gave a second statement to law enforcement on April 27, 1987, at the police department. In that statement Wright admitted that the first statement was not true because he was afraid and did not know what to do. In summary, the second statement included that a man named Roger, a/k/a Tuffy, opened the door of the apartment building and Wright walked in and noticed Roger was covered in blood. Wright then went with him to his apartment, No. 103, and he saw a safe in the living room, papers on the floor, and a hole punched in the bottom of the safe. He said that Shepard, his girlfriend, came to the door and Roger told her to go back to the car and then told him to "sit down and shut the fuck up" while Roger's friend was pointing a gun at him. Roger also had a gun and made threats to him. He and Roger then took the safe to the dumpster in the back of the building, with Roger's friend pointing the gun at him while they were doing it. Roger told him that they would meet later at a Coney Island restaurant and then Wright got back into the car with his girlfriend and then they went to his mother's house and he told both Shepard and his mother what happened. He said he stayed at his mother's house on

Monday, April 20th. On April 21st, he called Mario Bell, the brother of the owner of the apartment building inquiring as to whether he had seen Holmes.

Wright gave a third statement on May 1, 1987, at the police department. In that statement he said that his previous claim that he didn't have anything to do with cleaning up the apartment was not correct and he in fact did help clean up the apartment. He admitted to taking some things out to the dumpster with Roger. He noticed blood on the curtains that were taken out to the dumpster. He also stated that there "was some stuff on the floor that looked like it might have come out of Mr. Holmes' head."

It should be noted that defendant, in his motion for a new trial also focused on a "GASOLINE CAN" that was mentioned in the evidence technician's report found in the apartment's living room and this was mentioned in the crime scene sketch as well as photographs. Per defendant's motion there was no gas can mentioned at trial and this would be significant evidence linking Wright to the homicide.

During the trial Wright was cross-examined on these statements and defendant argued that Wright was the individual who committed the murder.

A warrant was signed on October 14, 1987, against defendant. In the intervening period between the time the warrant was signed and the murder defendant was arrested for the crime of fleeing and eluding and carrying a concealed weapon and was also the victim of a shooting. Defendant gave his name and address to police officers on both occasions according to the defense; the prosecution argues that the trial testimony inferred he may have given a false name for one of the arrests and that defendant failed to appear for his court date on both cases.

Defendant was apprehended by law enforcement on March 15, 1993. According to the arresting officer, there was information that defendant was at a Detroit apartment. He went to the apartment, while there the elevator door opened and he saw defendant. The officer recognized defendant from photographs, and observed him step back "into the elevator and start to press buttons." Defendant identified himself as Carlos Ray and was arrested.

In 2018, Scott Lewis Mischnick, a private investigator uncovered new information regarding the investigation. Mischnick found a "Detroit Police Homicide Section miscellaneous file." In the file, he saw a redacted copy of Wright's identification card that was found in Holmes' apartment. There was also a note indicating, "This ID was found wedg[ed] between [the] seat on [the] sofa in [the] living room of [Holmes's] apartment[.]"

There was also a handwritten note in the file. As indicated in the Michigan Court of Appeals opinion, the note stated:

"Something about E. Wright. Advised manager to Att. to get name + phone nbr. of Mr. Mitchel + have same [Mitchell] call [Homicide]. Mr. Mitchell is a friend of Judge Roberts. F.M.H.J." Supervisor of suspect, Edmond Justice Wright stated Edmond called into work sick Monday, 4-20-87....Mr.

Edmond called around 8:45A to 900A (work starts at 8:00 AM) stated he had a toothache + would not be in to work, and that he would bring in note.

[T]ues. 4-21-87 subject [Wright] came to work + stated he forgot note that he would bring same in Wed. Mr. Edmond came to work Wed. stated manager of Apt where he lived had been killed + that the Police had t/w him and had him looking for papers in his Apt + he forgot about note. Mr. Edmond has not been back to work since.

Advised 2-37 that subject had not picked up his payroll check at Univ.

Bearing [Wright's place of employment] + that he was to be arrested if he showed up. Mr. Chonko was also advised to contact #2 desk if Edmond [Wright] came for check...."

In an affidavit, defendant indicated that this information was never given over to him during the trial and he never knew of this information.

Investigator Mischnick contacted Jason Mitchell and interviewed him and Mitchell subsequently signed an affidavit. In the affidavit Mitchell said that he saw a newspaper article about the murder that took place and saw Wright, who was a friend of his, several days later. Mitchell and Wright used to do drugs together. Mitchell met Wright in his apartment wherein Wright admitted to Mitchell that "he had to get rid of Holmes to get the money." Wright showed Mitchell two .357 magnum pistols and money and asked if Mitchell could get rid of the guns. Mitchell did not get rid of the guns but called the Detroit Police and gave him his name and told them that he had information about the murder. Mitchell claimed in the affidavit that he was placed on hold for a long period of time and then hung up. Years later Mitchell saw Wright again and Wright "told [him] he was upset because [Wright] had to go to court and tell on someone but he didn't tell [Mitchell] who he had to tell on or what it was about." Mitchell didn't know defendant at the time of the murder but had heard of him selling drugs.

EVIDENTIARY HEARING

Pursuant to the Michigan Court of Appeals' order, this court conducted an evidentiary hearing to assess the credibility of the newly discovered evidence. An evidentiary hearing was conducted on November 26, 2025.

The first witness at the hearing was Jason Mitchell. He testified that he knew Edmund Wright in April 1987, because they both used to get high on cocaine together. At that time, he had known Wright for about four years and a few months. They were both around 30 years old at

this time. He considered Wright to be a friend. He did not know defendant, but knew of him. He testified that he remembered the murder of John Holmes and he first read about it in a newspaper, but he did not know Holmes personally. He said that the newspaper was the Detroit News and not the Free Press. He had contact with Wright at the time of the murder and Wright told him that Holmes had a lot of money in a safe. After the murder, Mitchell was in Wright's apartment and Wright, referring to the murder of Holmes, said that he had to get money out of the safe and get rid of John Holmes. Wright asked Mitchell to get rid of two .357 magnum guns. Wright also had a lot of money he showed Mitchell. Wright and Mitchell were the only people who were present during the conversation. Mitchell did not get rid of the guns and he has no knowledge as to what ever happened to the firearms.

As he was leaving, Mitchell encountered a man who worked at the apartment building and, after a conversation, the man told Mitchell that he should contact the police and Mitchell then gave the worker his number.

Mitchell further testified that he called the number for information and asked for the number to 1300 Beaubien St., the Detroit Police headquarters, and they connected him with the homicide unit. When he called the Detroit Police he said that he had information about Holmes' murder. He was on hold for a long time and eventually hung up. Nobody from the Detroit Police Department ever called him back and he never called them back. He testified that he called police at the time because what happened was morally wrong and he thought he would be getting a reward. He said he never thought of calling DPD back again.

Mitchell then testified that he saw Wright a couple years later after the conversation in Wright's apartment. In that conversation Wright told him that he had to go to court to tell on someone. He saw him on the street outside of a Hardee's restaurant and he was "ranting" and "raving" about the case, but didn't know for certain the case he was referring to.

Mitchell testified that in 1987 and the times he had the conversations with Wright, he was living in New Orleans but worked in Detroit as a construction worker and handy man. He stayed in Detroit by himself and rented from a woman by the name of Carolyn Calhoun on Indiana Street. In 2018 he still lived in Detroit on Indiana Street and today he lives on Terry Street and he said he is currently house sitting for someone named Darius Kitchen.

He said that he knew Roger Ray by reputation only and that he heard that Ray sold drugs. Wright also sold drugs. He didn't know and never met John Holmes. According to Mitchell, Wright lived by himself. He never knew Lisa Shepard. He knew Wright for over four years and saw him once or twice a month. He would see him at Wright's apartment building and Wright lived on the 5th floor and he thinks that the building had 9 floors. He described the apartment building as having a lobby. He described the apartment itself as being a one-bedroom apartment with curtains, a couch, chairs and a table. He never saw any female clothes at the apartment or anyone else at the apartment.

In 2018, he spoke with Investigator Scott Mischnick (a.k.a. Scott Lewis) after Mischnick reached out to him. Mitchell signed an affidavit that he said was true. He did not know how Mischnick got in touch with him or how he was able to make contact with him. He only

remembers Mischnick coming to his house in March of 2018, but he may have come a second time in April, Mitchell simply does not remember that. Mitchell testified that he never knew there was an actual trial in the Holmes case. He admitted that small details may have slipped his mind but that over the past 30 to nearly 40 years he could not get this case out of his mind, stating that “this stuck in my mind” and he could not forget it.

Investigator Mischnick testified as the second witness. He has been a licensed private investigator for 12 years and was a former investigative reporter. In May 2016, after conversations with defendant and pursuant to a FOIA request, he obtained a DPD homicide miscellaneous file. The prosecutor’s file had been lost. Mischnick testified that the file contained the aforementioned information of Wright’s identification and a hand written note found between the cushions of the victim’s couch.

Mischnick located but was never able to have a conversation with Lisa Shepard. He placed calls and sent her a letter. He also contacted the trial attorney, Rene Cooper, and Cooper doesn’t remember if the items were in the file or not or whether he had possession of them.

Jason Mitchell was brought to his attention by a Lou Williams, who gave Mischnick Mitchell’s phone number and he contacted Mitchell in 2018. Williams was the individual who was paying for Mischnick’s services on behalf of defendant. Mischnick called Mitchell and Mischnick made sure to ask open ended, non-leading questions to Mitchell.

The recording summarized and was by in large consistent with what Mitchell testified about. He did say that when Wright told him he had to go to court to tell on someone, Wright said that if he didn’t that he would go to jail. Mitchell believed he was talking about the murder of John Holmes. He believed that Wright was the one who did the murder and that Wright needed to tell on another person. He said after this last conversation that Mitchell got nervous and lost touch with Wright. He also said that he had never known defendant and it was not clear that he had any connection with any of defendant’s associates when asked about them.

Mischnick typed up an affidavit and went to Mitchell’s home and Mitchell needed to correct something in the affidavit so he went back a second time to have him sign it in 2018. Mischnick testified that he does not remember Mitchell being referenced in any note in the file.

COURT OF APPEALS OPINION AND ORDER

Pursuant to the Michigan Court of Appeals’ opinion and direction, this court is charged with examining the testimony of Jason Mitchell and the newly discovered evidence and how it compares with the evidence presented at trial.

“In order to determine the actual testimony that Mitchell has to offer, the trial court should have held an evidentiary hearing, affording the parties and the court an opportunity to question Mitchell to determine the full extent of his testimony and how that clarified testimony would impact the verdict under the fourth *Cress* prong. After all, the relevant question is not only

whether the new evidence exonerates defendant, but is also whether Mitchell's statements could have been used to impeach Wright's credibility to the extent a different result would be probable. Without question, Wright's testimony was the most damning evidence against the police and familiarity with Holmes. As the Supreme Court has recognized, 'impeachment evidence may be grounds for a new trial if it satisfies the four-prong test set forth in *Cress*.' *People v Grissom*, 492 Mich 296; 821NW2d 50 (2012). 'Newly discovered impeachment evidence concerning immaterial or collateral matters cannot satisfy *Cress*. But if it has an exculpatory connection to testimony concerning a material matter and a different result is probable, a new trial is warranted.' *Id.* at 321. Mitchell's statements, if credibly provided at an evidentiary hearing, could raise doubt regarding Wright's assertions that he was an innocent bystander who happened to arrive at the apartment after the murder and was ordered by defendant at gunpoint to help clean up the mess. Since defendant's conviction was predominantly based on Wright's testimony, raising reasonable doubts about Wright's credibility with Mitchell's statements may have made a different result probable.

Because the extent and credibility of Mitchell's testimony is unclear, and that testimony in consideration with other noncumulative evidence is crucial to a proper resolution of whether a different result is probable on retrial, we remand the matter to the trial court to hold an evidentiary hearing to take testimony from Mitchell and consider the other admissible, non-cumulative evidence discussed above. After the conclusion of the hearing, the court should re-determine whether the newly discovered evidence satisfied the fourth factor under *Cress*, and if necessary whether the evidence was material under a *Brady* analysis. See *People v Dimambro*, 318 Mich App 204, 219; 897 NW2d 233 (2016) ('To establish materiality, a defendant must show that there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine the confidence in the outcome.') (Quotation marks and citation omitted.)" *People v Ray*, unpublished per curiam opinion of the Court of Appeals, issued October 3, 2024 (Docket No. 365913).

LAW

Our Supreme Court has created a four-part test for determining whether a new trial should be granted based on newly discovered evidence. Under that test a defendant must show: (1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. *People v Cress*, 468 Mich 678, 692 (2003).

The prosecution, the trial court and the Court of Appeals have previously acknowledged that the first and third prong of the *Cress* factors were satisfied in this case. In its remand order, the Court of Appeals ruled that the second factor has also been met. The Court of Appeals

remanded the case only regarding the fourth factor and charged this court to hold an evidentiary to determine whether the fourth prong of the *Cress* test has been satisfied.

The fourth factor requires the new evidence to make a different result probable on retrial. *Id.* at 692. “In order to determine whether newly discovered evidence makes a different result probable on retrial, a trial court must first determine whether the evidence is credible.” *People v Johnson*, 502 Mich 541, 566-567 (2018). “In other words, a trial court’s credibility determination is concerned with whether a *reasonable juror* could find the testimony credible on retrial.” *Id.* at 567. “In examining whether this new evidence makes a different result probable on retrial, the trial court must consider the evidence that was previously introduced at trial.” *Id.* at 571. “Thus, the evidence that must be taken into consideration when assessing a claim of newly discovered evidence is not simply the evidence presented at the original trial, but also the evidence that would be presented at a new trial” *Id.*

In making the assessment as to whether a new trial is warranted based on newly discovered evidence “the trial court should consider all relevant factors tending to either bolster or diminish the veracity of the witness’s testimony.” *Id.* at 567. “If a witness’s lack of credibility is such that *no* reasonable juror would consciously entertain a reasonable belief in the witness’s veracity, the trial court should deny a defendant’s motion for relief from judgement. However, if a witness is not patently incredible, a trial court’s credibility determination must bear in mind what a reasonable juror might make of the testimony, and not what the trial court itself might decide, were it the ultimate fact-finder.” *Id.* at 568.

The prosecution argues that the standard is based on whether a reasonable jury could grant an acquittal whereas the defense argues whether a sole, reasonable juror (not the jury as a whole) should be the basis of a *Cress* and *Johnson* review. Though it is not clear, pursuant to *Connelly v U.S.*, 271 F.2d 333 (1959), upon which *Johnson* relied, the issue is whether the new evidence would probably produce an acquittal and not merely a hung jury and, therefore, this court reads *Johnson* as whether or not a reasonable jury would acquit based on the new evidence. When analyzing the *Cress* factors our Supreme Court noted “there is a reasonably probable likelihood that a *jury* would have a reasonable doubt as to defendant’s guilt.” (emphasis added). *People v Lemons*, 514 Mich 485, 521 (2024). Therefore, the term “reasonable juror” is the same and interchangeable with the term “reasonable jury”.

In assessing the credibility of a witness and whether a reasonable juror could and potentially would find that witness credible, this court is guided by the “Michigan Criminal Jury Instructions” and specifically instruction 3.6 regarding general witness credibility, (M Crim JI 3.6) which states:

- (1) As I said before, it is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is.

You do not have to accept or reject everything a witness said. You are free to believe all, none, or part of any person’s testimony.

- (2) In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a person's testimony, you must set aside any bias or prejudice you may have based on the witness's disability, race, national origin or ethnicity, gender, gender identity or sexual orientation, or religion, age or socio-economic status. Again, take the time you need to test what might be automatic or instinctive judgements, and to reflect carefully about the evidence.
- (3) There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:
- (a) Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?
 - (b) Did the witness seem to have a good memory?
 - (c) How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth, or did the witness seem to evade the questions or argue with the lawyers?
 - (d) Does the witness's age or maturity affect how you judge his or her testimony?
 - (e) Does the witness have any bias, prejudice, or personal interest in how this case is to be decided?
 - (f) Have there been any promises, threats, suggestions, or other influences that affected how the witness testified?
 - (g) In general, does the witness have any special reason to tell the truth, or any special reason to lie?
 - (h) All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?
- (4) Sometimes the testimony of different witnesses will not agree, and you must decide which testimony you accept. You should think about whether the disagreement involves something important or not, and whether you think someone is lying or is simply mistaken.

People see and hear things differently, and witnesses may testify honestly but simply be wrong about what they thought they saw or remembered. It is also a good idea to think about which testimony agrees best with the other evidence in the case.

However, you may conclude that a witness deliberately lied about something that is important to how you decide the case. If so, you may choose not to accept anything that witness said.

On the other hand, if you think the witness lied about some things but told the truth about others, you may simply accept the part you think is true and ignore the rest.

Our appellate courts have addressed the issues of credibility as well. Demeanor should be considered. “The credibility of a witness is determined more than words and includes tonal quality, volume, speech patterns, and demeanor, all giving clues to the factfinder regarding whether a witness is telling the truth.” *People v Lemmon*, 456 Mich. 625, 646 (1998).

Bias is also an important issue to assess credibility. “Bias is a term used in the ‘common law of evidence’ to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness’ like, dislike, or fear of a party, or by the witness’ self-interest. Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness’ testimony.” *People v Layher*, 464 Mich. 756, 763 (2001) (quoting *United States v. Abel*, 469 U.S., 45, 52 (2001)). “A successful showing of bias on the part of a witness would have a tendency to make the facts to which he testified less probable in the eyes of the jury than it would be without such testimony.” *Id.* at 762-763. Motive to testify falsely can also be used to assess testimony. *People v Yarbrough*, 183 Mich.App. 163, 165 (1990).

In analyzing Mitchell’s testimony this court also takes note of our Supreme Court’s instruction that it may take into account the passage of time in assessing potential discrepancies in testimony because “such discrepancies are unsurprising when the testimony occurred a decade after the relevant events and conversations took place.” *People v Blackston*, 481 Mich. 451, 471 n. 27 (2008).

ANALYSIS

This court did not find Mitchell’s testimony patently incredible. In fact, his testimony seemed credible to this court and, at the very least and more pertinently, a reasonable juror could find his testimony credible.

In analyzing the factors as set forth in M Crim JI 3.6, Mitchell seemed to be making an honest effort to tell the truth and answer all of the questions directly and he did not argue with the lawyers. His age had no effect in how this court analyzed his testimony. He did not have any bias, prejudice or personal interest in how this case was to be decided. There didn’t seem to be any close connection between him or defendant or anyone associated with defendant. Both sides in fact agreed that there didn’t seem to be any motive for him to lie. There was no indication that

there were any promises or threats or any other influences that affected how he testified. There was no special reason for him to lie and the court does believe that he had a reason to tell the truth because this was an incident that he never forgot and seemed to want to bring it to the attention of law enforcement and the court.

His testimony was reasonable when analyzed with the other evidence in the case as well the newly discovered evidence. For example, the note that was found stated, "Advised manager to Att. To get name + phone nbr. of Mr. Mitchel + have same [Mitchell] call [Homicide]." This seemed to corroborate the fact that after the conversation with Wright, Mitchell told someone at the apartment about the conversation and then called police. There is evidence that the note back in 1987 was based on the information Mitchell had at the time and did in fact call police. Also, there was no indication that Mitchell knew anything about the case other than a newspaper article from 1987 and his testimony seemed to indicate he knew something about the facts that someone wholly disassociated with the case would not know. For example, he knew about a safe, that the death was caused by a gunshot wound per Wright's request to have him get rid of the firearms. He also recognized that Wright was a main witness in the case that required him to testify by "telling on" someone. This was exactly what defendant's defense was at his trial, that Wright was the real perpetrator and pinned it on defendant. Mitchell gave a broad description of the apartment as being one bedroom with a couch, chairs, and a table. Though general, this was not deemed to be an incorrect description of the apartment itself, but there were some discrepancies regarding the number of floors and the building complex, discussed *infra*. There was no indication anyone fed this information to him or that Mitchell spoke to anyone about the case before his interview with Inv. Mischnick. In fact, it seems possible Mischnick didn't even know about the significance of the contents of the note in the file when he first had contact with Mitchell.

With regards to the other factors in M Crim JI 3.6, Mitchell did seem to have a clear understanding of what Wright said at the time of the conversations and that nothing distracted him at the time. Mitchell did admit to doing drugs at the time, which could lead to a glossed memory and a jury could give that information a lot of weight to negate such testimony. But it also indicates that he was honest about his prior drug use and didn't try to cover it up. Overall, Mitchell did seem to have a good memory about the specific conversations he had with Wright from events nearly four decades ago, and this issue will be discussed *infra* as well.

All in all, Mitchell had a calm, respectful, humble demeanor, yet confident in the facts he testified about. He showed no bias or motive to testify falsely.

The prosecution argues that Mitchell should not be believed because of several factors. First, they argue that Mitchell made a false statement because he said that he spoke with Wright in his apartment a couple of days after the murder, that the safe was inside Wright's apartment and that he had to get the money out of the safe. The prosecution claims this could not be true because the money was taken out of the safe on the day of the murder, the safe was dumped into the trash and photographs were admitted at trial with the safe being in the trash. The claim that the safe was immediately taken to the trash on April 19, 1987, was based mainly on Wright's testimony which could be deemed not credible as well. In fact, Wright didn't even contact Bell

about Holmes missing until two days later on April 21, 1987. *Blackston* is instructive, not remembering the exact day of the conversation from four decades ago is understandable and not surprising. The prosecution's claim that Mitchell's claim that Wright lived on the fifth floor is more concerning since the testimony was that he lived in apartment 103, according to the evidence at trial. Also, Mitchell testified that the apartment building was eight or nine floors while it was actually four floors. If this information had been from one or two years ago it would be very concerning and much less credible, but this court does not find lack of memory as to how many floors were in a building or which floor a person lived on four decades later in itself to be a reason to deem a witness not credible. This court finds it very possible that Mitchell was only in the apartment with Wright and may never have met Shepard, that he was only with Wright when Shepard was not around. It is understandable he only believed Wright lived there. Whether or not an article was in the Detroit Free Press or Detroit News is of no significant meaning to this court. The fact someone may have gotten the Free Press article confused with the Detroit News article four decades later is not surprising, though the evidence presented is that there was an article in the Free Press not that the Detroit News never had an article regarding this incident. The prosecution also claims that there was no explanation as to how Lue Williams was associated with defendant and how she knew to give information to Mischnick about Mitchell. The purpose of the hearing was to determine the credibility of Mitchell, either side could have called witnesses to testify. Either side could present testimony or impeach the witnesses regarding bias or motive to lie. Though potentially suspicious, the only evidence on the record was that Mischnick was given Mitchell's name and Mitchell spoke only to Mischnick. Mere suspicion does not make Mitchell's testimony completely incredible. The prosecution also claims that at the evidentiary hearing he told the police he gave information regarding the murder of "John Holmes" using both his first and last name, but in his recorded conversation with Mischnick he said he didn't give police the name and just referred to the victim as the apartment manager. Once again, whether or not he used the name of someone or didn't use the name from an incident four decades ago does not seem as though the person is inherently not credible or lying.

This court is not tasked to determine whether or not a jury will, for certain, believe Mitchell. The prosecution does point out some inconsistencies, especially in comparison with Wright's testimony and other evidence in the case. Perhaps a jury would accept that those inconsistencies would deem his testimony incredible. But this court cannot say that these failures of memory from such a significantly long time ago (four times longer than the witnesses' inconsistencies in *Blackston*), lead to the conclusion that no reasonable juror would find his testimony credible. As will be discussed *infra*, there were numerous inconsistencies and even falsehoods with Wright's differing statements to police and the jury was able to assess those inconsistencies and falsehoods and still believed his testimony enough to convict defendant. There were also significant inconsistencies between Shepard's testimony and Wright's. The statements Wright gave to police were all within 12 days of the homicide, not 39 years later. Mitchell gave statements that have some corroboration with what may have happened in the murder of John Holmes and this court can't say that the inconsistencies would preclude a jury from believing him.

The court assesses Mitchell's testimony in lieu of the other evidence presented in trial. It is undisputed that defendant was convicted primarily on the testimony of one witness: Edmond Wright. There is little if any other evidence connecting defendant to the crime without Wright's testimony. Lisa Shepard is the only other witness that could implicate defendant, but her testimony is based primarily as to what Wright told her and there are inconsistencies between her testimony and Wright's. Shepard simply places defendant inside the apartment with Wright at the time Wright said he was forced to assist defendant. She cannot testify as to what actually happened in the apartment. It is possible a jury could in fact deem this significant, but it seems equally plausible that a jury would assess the inconsistencies between Shepard and Wright in favor of defendant.

The inconsistencies include the fact that Shepard testified she waited only 5-10 minutes and then went to the apartment while Wright's mother remained in the car. Wright testified it was 40-45 minutes. The former testimony (and perhaps even the latter testimony) calls into question the ability to help clean up a murder scene in such a short period of time. At the apartment, Shepard indicated in her statement that defendant told her that Wright would be out with her coat and it was Wright who yelled to her to go back to the car. Wright did not indicate he told Shepard to go back to the car. Wright testified that when they both came back to the apartment on April 20th that his clothing was missing, the curtains were missing, as well as the bedding, while Shepard apparently didn't notice this.

It does seem somewhat suspicious and bizarre that, after telling Shepard and his mother about something happening in the apartment Wright and Shepard returned April 20th, and did not call the police. In fact, Wright feigned concern on April 21st in his conversation with Bell inquiring as to Holmes whereabouts while believing he had already been killed. It also is somewhat questionable that Wright and Shepard went to the apartment to get Shepard a coat when it was 75 degrees outside.

Another questionable issue that has arisen in the newly discovered evidence, particularly the note, is Wright's apparent failure to go into work on Monday, April 20th, and his subsequent failure to bring a doctor's note as promised and to pick up his check. Wright's lack of memory at trial as to whether he appeared at work the day after a brutal murder, much closer to the event than Mitchell's testimony, certainly increases doubt as to his credibility.

The other evidence that needs to be analyzed are the multiple differing statements given by Wright. In his first statement on April 21st, Wright clearly lied to the police saying he simply was worried about Holmes so he contacted Bell. He also said he went to Holmes apartment and heard the television was on. This was by all accounts a lie of omission. In his second statement given to police on April 27th, he admitted the first statement was not true because he was afraid. He said in this statement that Roger, a/k/a Tuffy, seemingly defendant, opened the door of the apartment building covered in blood, they went to the apartment, defendant's associate was there with a gun pointed at him, he helped dispose of the safe in the dumpster, and he stayed at his mother's house until April 21st. In his third statement given on May 1st, he said again that he was not fully truthful and actually helped defendant clean up the apartment. In contradiction to

another previous claim, he added blood was on the curtains and they were also taken to the dumpster and brain matter was on the floor of the apartment.

These statements are, no doubt inconsistent and could be seen as false exculpatory statements implicating Wright in the homicide. It is also suspicious that a gas can, that was mentioned in reports but not at trial, could further implicate Wright.

The prosecution makes legitimate credibility arguments calling into question Mitchell's testimony. Wright's testimony in comparison with Shepard's are also questionable and Wright's statements that are inconsistent with himself seem questionable. It is true that Wright's testimony was assessed and relied upon to convict defendant and, at least some aspects of his testimony were deemed to be truthful by the jury. But the testimony of Mitchell, coupled with the newly discovered evidence of the note, amounts to an admission of guilt by Wright and calls into question his entire testimony. It is one thing to claim Wright pinned the homicide on defendant without an admission by Wright, it is quite another with evidence of that admission, especially when the case was primarily based on Wright's testimony. In this court's experience, without an admission a jury would be much more likely to explain away inconsistencies with an understanding that Wright may have simply been afraid to tell the truth initially and may have understandably different recollections with Shepard. With the new evidence, a jury is given information that he may have been more than afraid, he may have been seeking to blame someone else which is just as reasonable in explaining the inconsistencies. This new evidence undermines the confidence in the outcome of the jury trial and makes a different result probable on retrial.

The identification that was found in Holmes' apartment may or may not be significant to the jury in a retrial. Wright did admit that he would go into Holmes' apartment which seems like a reasonable explanation, but the identification could put that evidence and testimony in a different light and could raise more questions in light of other evidence in the case.

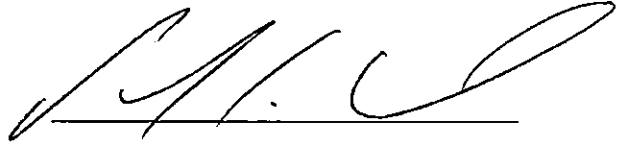
It should be noted that the previous trial court ruled, before any hearing, that the affidavit and new evidence merely made Wright an accomplice to defendant. Since the evidence at trial was primarily based on Wright's testimony, it seems just as likely for a jury to believe he was not simply an accomplice but committed the murder and tried to blame defendant for his actions. But that will be for a jury to determine and not this court.

Both parties also addressed the issue of defendant's flight. Flight evidence is admissible and can be used to show a consciousness of guilt. *People v. Coleman*, 210 Mich.App. 1, 4 (1995). Defendant argues he never committed flight, claiming that he gave a correct name to police when he was a victim of a crime and arrested. The prosecution claims there is evidence he did give a false name on at least one occasion, that he didn't show up to court on another case when he was supposed to, and was arrested in a suspicious way in which it could be inferred he was nervous on the elevator and tried to get away from the police. Flight alone is not sufficient to convict a person. *People v. Clark*, 124 Mich.App. 410, 413 (1983). There is certainly a valid argument that defendant did in fact flee, but this in itself does not negate the aforementioned analysis. This could be a factor a jury would have to weigh on retrial.

CONCLUSION

This court finds that a reasonable juror could find Mitchell's testimony credible and that, in comparison to the other evidence presented at trial, this new evidence would make a different result probable. Pursuant to the Michigan Court of Appeals order, a new trial has been granted under *Cress* and there is no need for this court to further address the *Brady* factors. This court is fully cognizant of the caution that must be given in granting a new trial based on the *Cress* factors and that it should only be done in the most limited and compelling of circumstances. *People v Rao*, 491 Mich. 271, 279-281 (2012). For the reasons stated, this is such a circumstance and a new trial is granted.

It is so ordered,

A handwritten signature in black ink, appearing to read 'P. J. Cusick', is written over a horizontal line.

Hon. Paul John Cusick

Dated: May 11, 2026