

COVER LETTER

TO: Clerk of the Court
Frank Murphy Hall of Justice
1441 St. Antoine
Detroit, MI 48226

RE: People V. Mitchell,
Case No. 01-003283

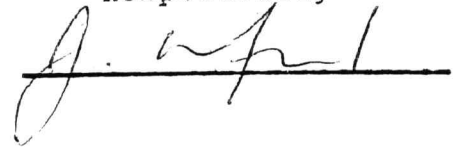
Date: 7.01.23

Dear Clerk,

Enclosed for filing please find the following:

- 1) Motion For New Trial
- 2) Evidentiary Hearing
- 3) Proof of Service

Respectfully



A handwritten signature in cursive script, appearing to read "J. W. Paul", is written over a solid horizontal line.

STATE OF MICHIGAN
IN THE 3RD CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Case No. 01-003283
HON. Donald L. Knapp

v.

JAMARIO MITCHELL,
Defendant, /

DEFENDANT'S MOTION FOR A NEW TRIAL
WHERE A MISCARRIAGE OF JUSTICE OCCURRED
DENYING THE DEFENDANT A FAIR TRIAL THIS
MOTION FOR A NEW TRIAL COMES UNDER MCL 770.1

NOW COMES Defendant Jamarío Mitchell, moves this Court to GRANT his motion for a new trial, in his support he asserts the following:

1. The Defendant was charged with First Degree murder, Assault with Intent to Rob While Armed, and Felony Firearm by the Wayne County Prosecutor's office.
2. The Defendant had a jury trial, and was convicted of all charges on December 10, 2001.
3. The Defendant was sentenced to Life for the Felony Murder and the Assault w/Intent to Rob While Armed, and two years for the Felony Firearm on January 07, 2002.
4. The Assault w/Intent to Rob While Armed was vacated years later in a post-conviction motion.
5. While the Defendant did in fact appeal his conviction and sentence

the instant matter before this Court has not been litigated in any prior motions..

6. This motion is not barred by any means.

AUTHORITY:

MCL 770.1: The judge of a court in which the trial of an offense is held may grant a new trial to the defendant, for ANY cause for which by law a new trial may be granted, or when it appears to the court that justice has not been done, and on the terms or conditions as the court directs.

In People V. Borrows, 358 Mich. 267, 279 (1959), the Michigan Supreme Court held that "under Michigan law there is no final time limitation upon the power of the trial court to grant a motion or new trial." The intent of the Legislature can be seen in the language of People V. Hurwich, 259 Mich. 361 (1932), wherein the Court expressed that, "the legislature undoubtedly...intended to confer on the court the power to order new trial without limitation of time."

~~The Defendant contends, that this statutory grant of juris-~~
diction cannot be changed by Court Rule. In Washington-Southern Nav. Co. V. Baltimore & Philadelphia Steamboat Co., 263 U.S. 629, 635-639 (1923), and Shannon V. Ottawa Circuit Judge, 245 Mich. 220 (1928), the United States Supreme Court and the Michigan Supreme Court held:

"No rule of court can enlarge or restrict jurisdiction. Nor can a rule abrogate or modify the substantive law. This is true whether the court to which the rules apply be one of law, equity, or of admiralty."

"It is true of rules of practice prescribed by this court for inferior tribunals, as it is of those rules

which lower courts make for their own guidance under authority conferred."

The Defendant contends that this Court should not abuse its discretion in converting his motion into a 6.500 motion, an error commonly made by trial courts.

FACTS:

Allegedly, the Defendant made a confession statement to detective Smith after his arrest and during an interrogation session. When the Defendant went to his Preliminary Examination, he discovered that detective Smith had accused him of making a confession statement during an interrogation session detective Smith conducted, the Defendant immediately informed his attorney that detective Smith was lying, that he never made any such statements, the Defendant's trial counsel took the information supplied by the Defendant, and moved the court for a Walker hearing by motion, in the Circuit Court. On the day the Walker hearing was to be held, Defendant's trial attorney removed themselves from the case, the trial court naturally postponed the hearing (See Registry of Action attached hereto), when Defendant's new counsel was appointed, the trial court never re-scheduled the Walker hearing, it is therefore, still pending.

(A).

ARGUMENT

DEFENDANT WAS DENIED HIS
RIGHT TO A FAIR TRIAL WHEN
THE TRIAL COURT FAILED TO HEAR
HIS PENDING WALKER HEARING MOTION

Without all the fancy legal genre, the Defendant will show this Court that he did not have a fair trial, and is absolutely entitled to a new trial, where the trial court failed to conduct

a Walker hearing he had pending, a hearing that was post-poned do to Defendant's initial trial attorney removing themselves from the Defendant's case. This hearing was essential to the Defendant's defense, in fact, had the hearing have been conducted, the statement in question would have not been admitted into the Defendant's trial, as the Defendant never made the statement, a fact the Defendant informed his initial trial attorney of, the Defendant informed his trial attorney that he never made a statement to Detective Smith, that the document (later discovered to be a statement prepared by Detective Smith) was believed to be release forms, as the Defendant was under the impression that he was being released (See Def. Decl. attached hereto), after the Defendant signed what he believed to be release papers, Detective Smith began stating "I know you played more of a roll..." Id. The Defendant then asked if he could make a phone call to call his father, Detective Smith asked the Defendant why he wanted to call his father and the Defendant told him, so his father could get him a lawyer, establishing that he expressed his desire to consult with an attorney. Abela V.

Martin, 380 F.3d 915 (CA6 2004)(Court held that Defendant invoked Fifth Amendment right to counsel where, in response to Maranda warning he stated that "maybe I should talk to an attorney...").

The Defendant also informed counsel that there is no audio or video to this alleged confession statement, trial counsel filed a motion for a Walker hearing (Attached hereto), and rightfully so, as, the court has held, where the defendant contends that his statements were involuntary, the trial court must conduct a hearing outside the presence of the jury to determine the issue of voluntariness,

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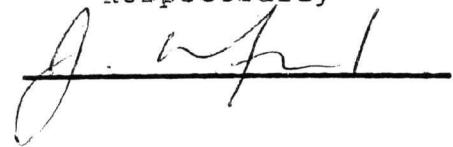
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The Defendant also informed counsel that there is no audio or video to this alleged confession statement, trial counsel filed a motion for a Walker hearing (Attached hereto), and rightfully so, as, the court has held, where the defendant contends that his statements were involuntary, the trial court must conduct a hearing outside the presence of the jury to determine the issue of voluntariness,

at which the defendant may take the stand without waiving his right not to testify at trial. Only if the trial court finds that the statements are voluntary may they be admitted into evidence. People v. Walker, 374 Mich. 331 (1965). Here in the instant case, no such determination was made by the trial court because the hearing was not held. The fact that the Defendant alleged that he did not make a statement to detective Smith, and the fact that detective Smith was under investigation for using corrupt tactics to obtain confession statement (of which he later left the force for), the Defendant's Walker hearing should have been held.

(B). DEFENDANT IS ENTITLED TO A NEW TRIAL
WHERE THE PROSECUTOR INTENTIONALLY WITHHELD
EVIDENCE THAT WOULD HAVE ALLOWED THE DEFENSE
TO IMPEACH DETECTIVE SMITH THUS MITIGATING
THE WITNESS'S CREDIBILITY

In the case at bar, Defendant Mitchell was charged with Felony murder, assault w/intent to rob, and felony firearm for acts that occurred February 19, 2001, in Wayne County. Defendant was charged with two other co-defendants Osiris Guesta and Aljarrau Akins. Osiris plead out in exchange for his testimony against the Defendant and Mr. Akins.

Although Mr. Guesta turned state, and was the only eye witness to the crime, his testimony had no barrings on the Defendant, in fact, the only evidence that tied the Defendant to the crime was the alleged statement detective Smith claims he made (T.T 12-5-01 16, 17, 18), and Closing Arguments (T.T. Pgs. 9-30).

The Defendant has always asserted that the statement was false, that he (during the interrogation) requested counsel, and each

time he was refused. He was urged by homicide investigator Smith to sign the statement. Informed that that would expedite his release. After signing the statement Mr. Mitchell was charged.

Mr. Mitchell informed his trial counsel Rita Young of what had occurred. Ms. Young moved for a Walker Hearing and one was scheduled to take place on July 27, 2001, yet on said day counsel decided to withdraw from Defendant's case. At no time afterwards did a Walker Hearing occur and at no time was Defendant allowed "or" given the opportunity to challenge his statement.

After years of incarceration and through prison paralegal Brandon Cain, Defendant Mitchell has recently discovered impeachment/Brady material had to investigator detective Isiah Smith and his illegal tactics used to obtain and/or secure false confessions and statements from both Defendant's (suspects) and witnesses, Please See Attached-1.

MCR 6.502(G)

Defendant Mitchell contends that this motion for relief from judgment is permitted as it is based off of new evidence Mr. Mitchell filed his last 6.500 motion in "2020" and at said time had not discovered Attached-1, which is Brady Material that could have impeached homicide detective Isiah Smith both at Defendant's trial and at a Walker Hearing had one occurred.

MCR 6.500(D),(3)

This information was not previously obtained or in Defendant's possession therefore, it could not have been raised in any prior motion for relief from judgment. Defendant Mitchell is an indigent inmate with little to no family support. No access to the internet and in over 20 years has never received a subscription to any News Paper. Therefore, he had no way of previously discovering Attached-1.

APPLICABLE AUTHORITY

Defendant has just discovered evidence that could have seriously impacted the credibility of the investigating officer Isiah Smith. Mr Smith was the only witness to provided damaging testimony against Mr. Mitchell, It was alleged by Mr. Smith that Defendant Mitchell provided statements that admitted guilt. Through the entirety of this trial, Mr. Mitchell has contested the validity of said statements. Defendant Mitchell has stated for years that on several occasion he requested counsel yet he was refused, and informed that "only after" signing the statement would he be able to leave (Please See Attached-2) (Affidavit of Defendant Mitchell) *Kyger v Carlton*, 146 F.3d 374 (6th Cir. 1998) (once a suspect request an attorney police cannot initiate further interrogation until the suspect has consulted with counsel. *Abela v. Martin*, 380 F.3d 915 (2004) (One's U.S. Const Amend V Rights are violated when Police elicited statements from him following his request for counsel) at no time did Defendant have the opportunity to challenge said statement as this Walker hearing was cancelled in violation of *People v Leonard* 81 Mich App ___, (1978) (Denial of a Pretrial Motion for a Walker Hearing constitutes error) Even if Defendant Mitchell took the stand it would have been a credibility contest between himself and a senior officer one that Defendant was sure to lose. It has recently been discovered that Mr. Smith has had a history of violating the constitutional right id suspects such as Defendant by obtaining false statements and/or conviction (Please See attached-1) (Articles On Investigating Officer Isiah Smith).

The impeachment evidence should have been disclosed to Mr. Mitchell in accordance with *Brady v. Marland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 40 U.S. 150 (1972) the suppression by the state of evidence that attacks the credibility of one if it's own witnesses violates due process where the evidence is material either to guilt or punishment *Brady*, 373 U.S. at 97,

and in order to asset a true "Brady Claim" there are three components that must be met.

(A). THAT THE EVIDENCE IS FAVORABLE TO DEFENDANT

It can be no doubt that the evidence was favorable to defendant. Any evidence that the investigating office had a "routine" of obtaining false confessions would have and could have definitely had an impact on the jurors.

(B). THE EVIDENCE WAS SUPPRESSED

In none of Defendant s discovery was any information available that impeached the credibility of investigating officer Isiah Smith, namely that he had a history and/or habit of eliciting false confessions by violating several constitutional rights of suspected individual's. This is problematic even if the prosecution was unaware. The duty of disclosure applies to relevant evidence know to the police whether or not the prosecution was aware Harris v. Lafle, 553 F.3d 1028 (6th Cir. 2009) It would only make sense to assume that Mr. Smith was well aware of his action s and the investigation and charges that followed.

(C). THE EVIDENCE WAS MATERIAL

The standard to prove materiality does nor require demonstation by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in Defendant's acquittal Kyles v. Whiley, 514 U.S. at 434.

In People v. Hoag, 89 Mich App 611 (1979) held that at very least information that goes to the credibility of a witness is material given that Isiah Smith was a witness it should only follow that the withheld information was material.

Defendant Mitchell suffered a huge injustice and both the Court of Appeals and Sixth Circuit have made it clear their total lack of tolerance for rogue officer's and their naferious ways of obtaining false conviction See People v. Craighead 2021 MichLEXIS 6160 (2021) and Kelly v Burton. 2022 U.S. DIst LEXIS

17530. Wherefore, Defendant contends that reversal is required.

RELIEF REQUESTED

WHEREFORE, For all the above stated reasons, Defendant respectfully request that this Honorable Court vacate Defendant s judgement and sentence and issue a new trial.

DATE 7/1/93

A handwritten signature in cursive script, appearing to be 'J. R. F.', is written over a solid horizontal line.

STATE OF MICHIGAN

FOR THE 3RD CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff

CASE NO. 01-003283-FC
HON. DONALD L. KNAPP

.v.

JAMARIO MITCHELL,
Defendant.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR NEW TRIAL

In the case at bar, the only evidence presented against Defendant was the alleged statements introduced through investigating officer Isiah Smith. Defendant has always held the stance, that the statements were not of his own but of investigating officer Isiah Smith, and that on several occasions Defendant requested counsel (Please See Attached-2) (Affidavit of Defendant).

WALKER HEARING

Defendant through counsel moved for a walker hearing which was to take place on July 27, 2001, (Please See Attached-3, Registry of Action), instead of holding the hearing. Attorney Young made a motion to be removed from Defendant's case. At no time was Defendant ever provided the opportunity to challenge the alleged statement. In *People v. Leonard*, 81 Mich App (1978). It was held that denial of pretrial motion for a walker hearing constitutes error. Also see *People v Little John*, 197 Mich App 220 (1992), (The Trial Court erred by failing to afford Defendant a full walker hearing). Had a walker hearing been held it would have been left for the trial judge to sit as the trier of facts to determine whether or not the falsely obtained coerced statements were inadmissible.

Attached 2 (Affidavit of Defendant Mitchell) should leave this Honorable

court no doubt that Defendant requested counsel several times yet was denied until he agreed to sign the statement. *Kyger v. Carlton*, 146 F.3d 374 (6th Cir 1998) held that the continuation of questions after Defendant request counsel is a violation of his rights and the admission of the statements from that interrogation is unconstitutional also see *Edwards v Arizona*, 451 U.S. 477 (1981) (once a suspect request an attorney police cannot initiate further interrogation until the suspect has consulted with counsel, *Abela v Martin*, 380 F.3d 915 (2004) (One s U.S. Const Amend V Rights are violated when Police elicited statements from him following his request for counsel).

At no point did Mr. Mitchell have the opportunity to challenge the statement, even if he had opted to take the stand at his trial and exposed the actions of investigating officer Isiah Smith it would have boiled down to a credibility contest one that Defendant was sure to lose.

BRADY VIOLATION/IMPEACHMENT EVIDENCE

Through the entirety of Defendant's trial the only individual presented to testify that Defendant provided a statement that he supplied the weapon used to commit the acts that resulted in Defendant s conviction was investigating officer Isiah Smith. According to Mr. Smith, Mr. Mitchell supplied the murder weapon and had expectations on getting paid for doing so. During trial there was no way for Defendant to attack "Isiah Smith' credibility as both Defendant and his trial attorney were unaware of the impeachment evidence. It was never disclosed that investigating officer Isiah Smith was under investigation for misconduct, eliciting false statement and confessions (Please See Attached-1) In order to obtained convictions.

The impeachment evidence should have bee disclosed to Mr Mitchell in accordance with *Brady v Maryland*, 373 U.S. 83, (1963) and *Giglio v United States* 405 U.S. 150 (1972). The suppression by the state of evidence that

attacks the credibility of one of its own witness violates due process where the evidence of material either to guilty or punishment. Brady 373 U.S. at 87 and in order to assert a true Brady claim there are three components that must be met.

1. THAT THE EVIDENCE WAS SUPPRESSED

In none of Defendant's discovery material was any information available that impeached the credibility of investigating officer Isiah Smith namely that he had a history and/or habit of eliciting false confessions and ignoring rules to obtain such, even if it meant violating a suspects constitutional right. This is problematic even if the prosecution was unaware. The duty of disclosure applies to relevant evidence known to the police whether or not the prosecution was aware Harris v. Lafler. 443 F.3d 1028 (5th Cir. 2009).

2. THE EVIDENCE WAS FAVORABLE TO DEFENDANT

It can be no doubt that the evidence was favorable to Defendant any evidence that the investigating officer had a routine" of obtaining false confessions would have and could have. definitely had an impact on the jurors. This was not a case where Mr. Mitchell received a fair trial (e.g. A walker hearing) or where there was overwhelming evidence against him. The only evidence presented against Mr. Mitchell came from Mr. Smith and the proposed statements.

3. THE EVIDENCE WAS MATERIAL

People v Hoag 89 Mich App 611 (1979) held that at very least, Information that goes to the credibility of a witness is material. Given that Isiah Smith was a witness. It should only follow that the withheld information (Attached As Exhibit 1) that seriously puts the investing officer Isiah Smith testimony and credibility into question is material.

CONCLUSION

Defendant is presenting this motion for a new trial after having his

judgement of sentence amended and having counsel appointed as supported Please See People v. McNeed 2019 Mich App LEXIS 1716(2)(18) unpublished attached as Exhibit 4, where after receiving an amended judgement of sentence Defendant not only was allowed to appeal by right in the Michigan Court of Appeal but was also provided the opportunity to move a new trial in the Circuit Court. A motion that was simply denied because McRees motion for new trial was not based on any new issues (New Information) Again Please See Attached 4 Also See People V Williams 2019 Mich App LEXIS 334 (2019) (Attached 5) where Defendant was convicted in 2011 yet provided the opportunity to move for a new trial after his Judgement of Sentence was amended.

Defendant Mitchell in the case at bar unlike the above referenced cases bases his motion for "new trial" off of new evidence. That being the impeachment Brady material regarding investigator Isiah Smith's conduct and actions. Further a new trial should also be granted simply because Defendant was never provided the opportunity to challenge the statements at a walker hearing. A hearing (that if took place today) That would have surely resulted in Defendant favor. Wherefore Defendant respectfully request that this motion be granted.

RELIEF REQUEST

WHEREFORE Defendant respectfully request that this Honorable Court take into account the unjust that has deprived Defendant of his due process right for nearly 20 years and grant a new trial and provide Defendant the opportunity to challenge the illegally obtained false statements.

DATE 7/1/23

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Plaintiff,

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JAMARIO MITCHELL,

Defendant.

MOTION FOR EVIDENTIARY HEARING AND A NEW TRIAL BASED ON
NEW EVIDENCE OF BOTH "IMPEACHMENT" AND "BRADY MATERIAL FILED TIMELY
AFTER DEFENDANT'S AMENDMENT OF JUDGEMENT AND APPOINTMENT OF COUNSEL

Defendant, Jamario Mitchell, In Pro per moves this court to grant his motion for New Trial and set aside his verdict pursuant to MCR 6.419(B) and MCR 6.431(A) for the following reasons

1) Defendant Mitchell was convicted of Felony Firearm, Felony Murder and Assault With Intent To Rob While Armed on December 10, 2001. The trial was held on the Circuit Court for the County of Wayne. The Honorable Prentis Edwards presided over the case.

2) Although Defendant was sentenced on January 7, 2002, It wasn't until July 6, 2021, that this Honorable Court amended Defendant's Judgement of Sentence to dismiss the charge of assault With Intent To Rob While Armed and to have the J.O.S. correctly reflect Defendant's sentence for his felony firearm charge to be ran consecutive to his predicate felony.

3) Defendant filed a Notice To Appeal (regarding the J.O.S.) and it wasn't until November 24, 2021, that counsel was appointed.

4) This motion is being timely filed within the time allotted given the period that Defendant was forced to wait for the appointment of counsel.

5) Because Defendant has recently obtained Newly Discovered Impeachment Evidence as to the credibility and conduct of investigating officer Isuah Smith

who violated Defendant's Fifth amendment right to counsel and obtained a false confession after Defendant's request for counsel, (which also equates to a Brady violation as the Attached Exhibits place the credibility of investigating officer Isiah Smith "out the window"). A new trial should be granted, especially in light of Mr. Mitchell being deprived of a walker hearing that was scheduled to occur on July 27, 2001 yet never took place.

6) The evidence that led to Defendant's conviction was the statement of Defendant obtained from investigating officer Isiah Smith. Defendant has always maintained that he requested counsel several times yet was continuously denied. That Mr. Smith enticed Defendant to sign statements with the promise that afterwards he would be allowed to leave. Defendant was eventually assigned Attorney Rita Young who Defendant Mitchell informed of what occurred. Attorney Rita Young moved for a walker hearing which was scheduled to occur on July 27, 2001, yet on said day, instead of Defendant's walker hearing taking place, His Attorney filed a motion to be substituted as counsel, and no hearing ever occurred. Defendant Mitchell has now obtained/discovered impeachment evidence regarding similar acts used by Mr. Smith to obtain false and/or inadmissible statements. The actions of Mr. Smith as well as the investigation into him also qualifies as Brady material (Please See Attached 1).

For these reasons and those set forth in the accompanying memorandum Defendant Mitchell asks that this court grant his motion for a new trial and for an Evidentiary hearing to allow Defendant the opportunity to establish a record to allow for Defendant's claim to be properly presented "with a record in support."

DATE: 7/1/03.

AFFIDAVIT OF DEFENDANT MITCHELL


1. I, Jamarie A. Mitchell, declare under the penalty of perjury that the following is TRUE and CORRECT:
2. When I was initially brought to 1300 Beaubien, I spoke with a detective Jackson, who told me that I was there for questioning.
3. Detective Jackson told me, that "in order for you to be released today, you would have to cooperate with the questioning today."
4. Detective Jackson instructed me to initial each miranda warning (at no time did I read them, because I could not read at that time), and to sign the document, I did as instructed, the warnings were never read to me by detective Jackson.
5. After the Jackson's interrogation, he placed me in a holding cell, where I awaited my release.
6. When prisoners were being released, my name was not called, I asked the officer calling the names if my name was on there, and he told me "No."
7. When another officer made a round (approximately 30-minutes later) I asked him when would I be released, and explained to him what detective Jackson told me, the officer said that he would check it out, when He came back, he said that officer Jackson told him that a detective Smith wanted to talk to me first.
8. Detective Smith did not pull me out of the cell untill approximately 10:30 a.m., at which time he stated "I have a few questions of my own, but first, I want you to initial each one of these lines like you did for Mr. Jackson, and then sign it for me." I did as instructed, and Mr. Smith proceeded with his questioning, but I

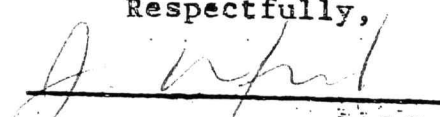
told him the same thing I told Mr. Jackson, when he was done, he walked me to another desk with some papers in his hand, he sat the papers on the desk with his hand over it, and told me to sign it, I was under the impression that I was signing release papers, but found out later, that it was a confession statement prepared by Mr. Smith.

9. After I signed the document believed to be release papers, Mr. Smith began stating, "I know you played more of a role ." I immediately cut him off, and stated "It sounds like you are accusing me of a crime, and that you are not going to release me, and if that is the case I would like to call my father." Mr. Smith asked, "Call your father for what?" and I stated "So he can get me a lawyer." Mr. Smith stated "A lawyer for what, you didn't do anything remember? and you never wrote a statement."

10. Detective Smith took me back to the holding cell, where I awaited to be released, and again, names were called, but my name was not, and when I asked the officer why, he stated "Let me go and see." When he returned, he stated "I told officer Smith what you said, and he said that he changed his mind, that he is charging you."

11. At the preliminary examination, I discovered that Detective Smith alleged that I made a statement to him, I immediately explained to counsel (Ms. Rita Young), that he was lying, that I never made any statement to him, I explained the above facts to her, and she proceeded with filing a motion for a Walker hearing, after questioning Mr. Smith at the preliminary examination hearing. The motion was filed in Circuit court.


Mike McDowell
Notary Public-State of Michigan
County of Chippewa
Acting in the County of Chippewa
My Commission Expires 08/21/2026

Respectfully,

Date: 6-21-23