

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

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Hon. Donald L. Knapp

v

Case No. 01-3283-112FC

JAMARIO A. MITCHELL,

Defendant.

NOTICE OF HEARING

Please take notice that Defendant pro se herein moves this Honorable to hear this motion on or about May 28, 2024 or anytime thereafter the court finds just.

Respectfully,



Jamario A. Mitchell
Carson City Corr. Fac.
10274 Boter Road
Carson City, Mich 48811

Dated 2/16/2004

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

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Hon. Donald L. Knapp

JAMARIO A. MITCHELL.

Defendant.

Case No. 01-3283-02FC

MOTION TO AMEND PENDING MOTION FOR NEW TRIAL TO BE CHARACTERIZED
AND REFILED AS AN SUCCESSIVE MOTION FOR RELIEF FROM JUDGMENT
BASED UPON NEWLY DISCOVERED EVIDENCE MCR 502. F

Procedural History

Presently pending before this Honorable Court is Defendants pro se motion for new trial. Defendant respectfully request that this court allow Defendant to amend his present motion to be characterized as a Successive Motion For New Trial Based Upon Newly Discovered Evidence pursuant to MCR 502. F.

Material Facts of Newly Discovered Evidence

Prior to trial Defendant counsel advised Defendant that the Prosecution plans on using a statement Defendant alleged to have made to Officer Isiah Smith. Counsel then examined the statement with Defendant.

In response, Defendant advised counsel that he never made such a statement. And that the only thing Defendant signed under the behest of Officer Smith was what he was led to believe was a release form. Defendant was also led to believe that after he signed the form he would be released. Based upon his innocence,

ignorance and desire of his freedom Defendant signed the form without asking any questions which 8 out 10 people would have more than likely done after sitting in a filthy cell and psychologically traumatized for several hours.

Thereafter hearing this story, counsel concerned as to whether or not said statement were in fact voluntary moved for a Walker Hearing which was subsequently scheduled.

Unfortunately, just before the Walker Hearing was scheduled to be heard counsel withdrew based in part of a formal complaint Defendant filed to the Court regarding counsels lack of diligence in pursuing the Walker hearing and several others critical matters.

When new counsel arrived he assured Defendant that he was going to pursue the Walker Hearing. For reasons unknown, new counsel abandoned Defendants quest to show that said statement was involuntary and fraudulently designed.

Direct Trial Testimony

The Prosecution prized witness, alleged co defendant Osiris Cuesta testified that Defendant had nothing to do with the crime and was not even present when the victim was killed. Thus, as the case weakened the Prosecution set the stage for the introduction of this statement by enhancing and bolstering the credibility and integrity of Officer.

The statements was subsequently allowed into evidence as the most compelling evidence against Defendant. Under the advise of counsel, Defendant elected not to testify, which he wanted to

do. In an unrelated case People v Evans Wayne Ct. No. 01-03333. [Dated 1-2-21). Officer Smith was asked the following questions during the time of Defendants trial.

Q. You would never, Sergeant, keep an individual in custody just for the purpose of getting a statement from him; would you?

A. Sergeant Smith, No.

Q. You never done that?

A. No. [T.T. Pg. 95 96 Exhibits A.] The following newly discovered evidence reveals Officer Smith perjured himself.

Newly Discovered Evidence

On or about Nov. 11, 2023. Defendant received in the mail from acclaimed and credited crime writer and investigator Mary D. Burkowski a series of documents that were withheld from Defendant during his trial that would have directly impeached the credibility of Officer Smith. Including and not limited to:

1. Illegally detaining citizens against their will until they issue doctored and fraudulent statements.

2. Witness Intimidation, Coercion of Witnesses and Tampering With Evidence.

3. Fraud, Misconduct And Violations of Integrity of office and a underground network of criminal and immoral misconducts contrary to his oath of office. [Exhibits B].

Outcome Determinative Factors

Had the Walker Hearing been held. Defendant would have discovered that Officer Smith had a history of detaining citizens

against their will until they involuntarily issue false statements in return for their freedom. A similar claim which Defendant now swears to have occurred in this case revealing a ongoing pattern of Officer Smith illegal activities. [Exhibits B].

Having satisfied all the elements warranting a Walker Hearing. Defendant avers that if the jurors were given the opportunity to debate whether Officer Smith morbid history of deceitful practices coincide with similar allegations alleged herein, its reasonable to assume said statements allegedly made by Defendant may have been determined to be involuntary and fraudulently obtained by Officer Smith. Defendant may have been acquitted.

Issue I

NEWLY DISCOVERED EVIDENCE REVEALS THAT DURING THE TIME OF OFFICER SMITH INVESTIGATION OF DEFENDANT OFFICER SMITH WAS UNDER INVESTIGATION FOR MISCONDUCT, BETRAYAL OF THE PUBLIC TRUST AND OATH OF OFFICE ALL OF WHICH WAS WITH HELD FROM DEFENDANT

Standard of Review

In People v Cress, 468 Mich 678, 682 (2003) the court held that in order to obtain relief based upon newly discovered evidence, a defendant must satisfy a four part test.

1. First, defendant must show that the evidence itself, not merely its materiality, was newly discovered. Defendant has satisfied this prong by showing that the evidence itself is in fact newly discovered.

2. Secondly, a defendant must show that the newly discovered is not cumulative. Defendant avers that no other

evidence at trial remotely resembles this newly discovered evidence.

3. Third, a defendant must show that using reasonable diligence, the party could not have discovered and produced the evidence at trial. Defendant has satisfied this prong by showing that its reasonable to assume that the Prosecution was aware of Officer Smith being under criminal investigation by (Internal Affairs) which a highly secret organization that operates under a cloak of un-presidential secrecy making it virtually impossible for Defendant to infiltrate even if he known such an investigation existed. Whatever diligence needed to exercise and obtain the records noted herein, if known, was futile in the face of such an enormous power.

4. Fourth, a defendant must show that the new evidence makes a different result probable on retrial. Defendant has satisfied this prong by showing that the evidence and criminal conduct of Officer Smith illegal activities would have allowed Defendant to impeach him and present to the jury Officer Smith twisted history of fraudulent practices.

This newly discovered evidence has extorbating -- evidentiary nature because on retrial, it may permit defendant to explore access to Officers Smith disciplinary files, investigative reports, etc... revealing other crimes to show that immoral, corrupt conduct of Officer Smith are contemporaneous with, or prior, or subsequent to the conduct at issue in this case that could have resulted in Defendants acquital of all

charges.

Issue II

THE NEWLY DISCOVERED EVIDENCE IS SUFFICIENT TO UNDERMINE THE
OUTCOME AND CONFIDENCE IN THE JURY'S VERDICT

In United States v McClellon 260 F Supp. 3d 880 [2017]
the Court held that a key Brady violation exist where it is shown
that when the defendant is not informed that the arresting
officer, who was a key witness, was being investigated for a
series of criminal charges similar to those claimed by Defendant.

To prevail on a Brady claim, [the defendant] need not show
that he 'more likely than not' would have been acquitted had the
new evidence been admitted. *ibid* quoting Smith v Cain 565 U.S. 73
(2012). He must show that the new evidence is sufficient to
'undermine confidence' in the verdict.

Here, Defendant has met this burden by showing that
Defendant was entitled to the information about Officer Smith
prior misdeeds. The failure to disclose that evidence violated
Defendants right to Due Process, as the Supreme Court defined in
Brady v Maryland and the cases that follow it. Because the with
held evidence 'likel[y] could have effected the judgment of the
jury' [citing Giglio at 405 U.S. at 153-54], the interest of
justice . . . requires that the defendant be granted a new trial.
United States v McClellon *19.

In accord, a showing of Officer Smith intentional
falsification of a statement with the intent to deceive the Court
is surely enough evidence to under mine the outcome of the jury's
verdict, not to mention Officer Smith blantant perjured response

in an unrelated case reveals his arrogance and lack of integrity when confronted with the truth.

Issue III

THE NEWLY DISCOVERED EVIDENCE IS ALSO MATERIAL IMPEACHMENT EVIDENCE THAT WOULD HAVE ALTERED THE OUTCOME OF THE TRIAL

Contrary to bolstering of the credibility and integrity of Officer Smith the newly discovered evidence would have also revealed Officer Smith's long history of deceitfully and illegally detaining citizens against their will in exchange for issuing false statements created by him as done to Defendant.

This newly discovered evidence would have also shown a pattern and sinister scheme designed by Officer Smith to fraudulently obtain involuntary statements.

This shocking misconduct would have surely cast doubts in the minds of jurors of reason and put into question whether the statement Defendant alleged to have made was not the product of fundamental fairness but moreso, the residue from the arsenal of immoral and diabolical weapons used to by Officer Smith to exploit the rights, weakness and ignorance of suspects and the like.

Discussion

Notably, Michigan Courts has not limited its view when discussing the weight of newly discovered impeachment evidence and held that because a trial courts decision to deny relief from judgment was founded on legal error, it necessarily ["to the extent that any Michigan decisions impose a per se prohibition against granting a new trial in light of newly discovered

impeachment evidence, they are hereby overruled]." People v Daniels, 2023 Mich App Lexis 4795. See also People v Grisson, 492 Mich 296 (2012).

In addition, a defendant must demonstrate a good faith belief that there is a reasonable probability that the officers personnel file was likely to contain material information bearing on the officers credibility that was necessary to the defense such that the defendant was entitled to inspection.

As seen, Defendant has shown a good faith belief that the exposure of Officer Smith history of deceitfulness and corruption no doubt demonstrate inspection to show Officer Smith ongoing pattern of corrupt activities in of itself warrants review to ascertain why the Prosecutor never revealed to Defendant Officer Smith mischief which would have had a significant impact on the jury deliberations as to whether Officer Smith lawfully and voluntarily obtained a statement from Defendant.

Issue IV

BASED UPON NEWLY DISCOVERED EVIDENCE AND CLAIMS OF INNOCENCE GOOD CAUSE AND PREJUDICE SHOULD BE WAVED

Defendant has filed a prior motion for relief from judgment. None of the claims herein were available during that time. Defendant just recently discovered the herein documents [attachments] governing Defendant claims of prosecution suppression and withholding of material impeachment evidence of Officer Smith. [Exhibit B].

MCR 6.508 et seq allows the filing of a successive motion

based newly discovered evidence.

Factual And Actual Innocence

The sole and most critical evidence against Defendant was an alleged statement Officer Smith typed up, and later claimed that Defendant dictated alleged statement to him. This statement was fabricated during the time in which Officer Smith was under investigation for a series of misconducts including those similar to the ones Defendant now swears.

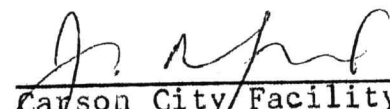
Declaration

Defendant hereby swear under the penalty of perjury that all of the foregoing statements are true.

Relief Sought

Grant Defendants motion to amend to further argue his claims of innocence and thereafter conduct a Walker Hearing.

Respectfully,



Carson City/Facility
10274 Boyer Road
Carson City, Michigan 48811

Dated 2/16/2024

Appendix of Exhibits

A. Trial Transcripts Taken From People v Evans 01-03333 Jan. 2, 2021.

B. News Reports, Excerpts From Judicial Records.