

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v.

MICHAEL DEGRAFFINRIED,

Defendant.

Case No. 99-6691-01-FC
HON. THOMAS CAMERON

Hon. Kevin Cox

Kym Worthy
Wayne County Prosecutor's Office
1441 St. Antoine Street
Detroit, Michigan 48226

Michael Degraffinried
M.D.O.C. ID #309346
Chippewa Correctional Facility
4269 W. M-80
Kincheloe, Michigan 49874

MOTION FOR RELIEF FROM JUDGMENT AUTHORIZED BY MCL 770.1

The defendant, Michael Degraffinried, in Pro Se, ask this Court to grant a new trial through actual innocence for the following reasons:

1. On February 8th, 2000, deendant Michael Degraffinried was found guilty by a jury for second degree murder, two counts of assault with intent to commit great bodily harm, and felony firearm, in which he was sentenced to 30-50 years imprisonment for the second degree murder, 5-10 years imprisonment for each assault conviction, and two years for the felony firearm

conviction to run consecutively with the other convictions.

2. This court is granted authority to hear/grant this motion through MCL 770.1, which states that 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.

3. Defendant asserts that he is entitled to a new trial because of actual innocence through the form of an affidavit from one of the victims that claimed that he saw the person that assaulted him and it was not the defendant, thus therefore clearing him of the murder of Alondre Dvais and assault of Raymone Williams also, because all three charges stem from one event that happened simultaneously. The victim is also an eyewitness to the event and was never called by the state to testify at the trial. See Attachment (1).

RELIEF REQUESTED

Defendant asks this Court to please grant this new trial, MCLS 770.1: The judge of the 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.

Date: 5-4-20

Respectfully submitted,

Michael Degraffinried

Michael Degraffinried
M.D.O.C. ID #309346
Chippewa Corr. Fac.
4269 W. M-80
Kinchleoe, Michigan 49784

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

V.

Case No. 99-6691
HON. THOMAS CAMERON

MICHAEL DEGRAFFINRIED,

Defendant.

Kym Worthy
Wayne County Prosecutor's Office
1441 St. Antoine Street
Detroit, Michigan 48226

Michael Degraffinried
M.D.O.C. ID #309346
Chippewa Correctional Facility
4269 W. M-80
Kincheloe, Michigan 49874

BRIEF IN SUPPORT OF
MOTION FOR RELIEF FROM JUDGMENT AUTHORIZED BY MCL 770.1

INDEX OF AUTHORITIES

CASE	PAGE No.
Brady v Maryland, 373 US 83	.2
Murray v Carrier, 477 US 478	3,4
People v Cress, 468 Mich 678	.1
People v Johnson, 451 Mich 115	.1
Schlup v Delo, 513 US 298	3
US v Olano, 507 US 725	.5
STATUTES AND RULES	
MCLS 770.1	.7
MRPC 3.8(1)(2)(g)	5

EVIDENCE

Attachment (1), Victim's Affidavit	
Attachment (2), Officer Jamie Devoll's Supplementary Report of Crime Scene	

ARGUMENT

In the case of People v Degraffinried, the charges for the above convictions took place in the City of Inkster, no 6-15-99. At the time of the shooting, defendant was at the Inkster police department along with his grandmother picking up his cousin, who was arrested earlier that evening. Defendant presented an alibi defense in which he provided the court with five alibi witnesses. There were three victims in this case, two of them did not testify at trial, while the third's (Raymone Williams) preliminary examination transcript was read to the jury, in which he also did not positively identify Degraffinried as the shooter. Now comes defendant Michael Degraffinried with a motion for a new trial with an affidavit from the other surviving victim Willie Wimberly, proving his innocence of second degree murder, two counts of great bodily harm and felony firearm.

As in People v Cress, 468 Mich 678, and People v Johnson, 451 Mich 115, the courts stated that "in a motion for a new trial, in order for a new trial to be granted on the basis of newly discovered evidence, a defendant must show that: (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 make a different result probable on retrial."

In the instant case defendant has been incarcerated since June 15, 1999, there was no way for him to have access to any of the victims because of his incarceration. The victim, Willie

Wimberly, has come forth on his own accord, see attached affidavit of Willie Wimberly, in which the victim Willie Wimberly stated in his signed affidavit, that he was shot on June 15, 1999, he stated that he saw the person who committed the shooting and he can positively say it was not the defendant Degraffinried. He stated that he informed the detectives that tried the case that defendant Degraffinried was not the person that shot him. He stated that the prosecution's office never subpoenaed him to testify, even though the prsoecution's office was charging the defendant with the attempted murder of said victim, yet defendant was never afforded the right to confront his accuser because the detectives hid the interview they had with Willie Wimberly, which is a clear Brady violation. Brady v Maryland, 373 US 83 (1963)(The state must turn over information that is favorable to the defense). Willie Wimberly told the investigating detectives during an interview that Degraffinried was not the shooter, they hid this information from the defense and allowed perjured testimony to be introduced to the jury through the state's main eyewitness Broderick Ward, an eyewitness that the first responding police officer, Jamie Devell, testified as to not being on the scene at the time of the shooting. According to officer Devalll's trial testimony, he arrived on the scene one minute after the shooting and after he secured the scene, two individuals identified as Broderick Ward and Larry Abdulah rode up on bicycles claiming Degraffinried as to being the shooter. See Attachment 2: Supplementary Report." Now comes the victim Willie Wimberly in a signed affidavit stating that Broderick

Ward, who is his cousin, was not on the scene during the time of the shooting and therefore corroborating the previous stated officer's trial testimony as to Mr. Ward not being present during the time of the shooting and therefore giving perjured testimony to the jury, and this perjured testimony along with the testimony of Larry Abdullah is the only evidence that the state had against defendant Degraffinroid. There were several other witnesses who lived at the location and were present, but they never gave a statement to the police, if statements were made, then their statements were never turned over to the defense.

In light of this new evidence, defendant Degraffinried respectfully asks this Court to allow him to present his claims of innocence to the courts and correct the miscarriage of justice that was done to him and constantly being done by every day he spends in prison for crimes he did not commit, for he is an innocent man that has been incarcerated for the last 21 years.

In Schlup v Delo, 513 US 298, the court state that if a petitioner presents sufficient evidence of innocence, the petitioner should be allowed to pass through the gateway and argue the merits of his actual innocence. The court in the Delo case stated that the meaning of actual innocence as formulated by the Sawyer and Carrier standards does not merely require a showing that a reasonable doubt exists in the light of new evidence, but rather that no reasonable juror would have found the defendant guilty. It is not the district court's independent judgment as to whether reasonable doubt exist that the standard addresses, rather the standard requires the district court to

make a probabilistic determination about what reasonable, properly instructed jurors would do.

The jury in the instant case was never afforded the opportunity to hear from the victim in this case because the victim's opportunity to identify his assailant was taken away from him. Maybe if the victim was given an array of suspects in any type of line up, maybe he could have picked his assailant out of a lineup and he could have gotten justice for his injuries. The victim Willie Wimberly was present at the time of the shooting. He actually was the person who shot him. In his own words, it was not the defendant Michael Degraffinried who assaulted him, Raymone Williams, and murdered Alondre Davis, because all three victims were assaulted at the same time during a drive-by shooting.

As in the Carrier standard, Murray v Carrier, 477 US 478, "in order to satisfy Carrier's 'actual innocence' standard, a petitioner must show that, in light of the new evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. The focus on actual innocence means that the district court is not bound by the admissibility rules that would govern a trial, but may consider the probative force of relevant evidence that was either wrongly excluded or unavailable at trial."

This completely and fully applies to the instant case because this evidence from the victim being able to identify Degraffinried as not being his assailant was wrongly excluded by the detectives in this case, making it unavailable at trial

and this malfeasance was done purposely and maliciously, and therefore denying defendant his constitutional right to due process, the right to a fair trial and the right to confront his accuser. No reasonable, competent juror would have found the defendant guilty of these crimes once the victim would have told them that the defendant Michael Degraffinried was not the person who committed these crimes.

A miscarriage of justice came about when an innocent man was convicted of a crime that the detectives Darian Williams and Greg Hill both knew that Degraffinried was not the shooter, but they hid his information from the defense, which affected the entire outcome of the case, US v Olano, 507 US 725; The term miscarriage of justice means that the defendant is actually innocent, but in other criminal contexts the phrase has wider meaning extending to any error that seriously affects the fairness, integrity or public reputation of judicial proceedings, independently of the defendant's innocence.

Their actions caused a serious miscarriage of justice for not only the defendant but also the victims, because they never got the chance to actually punish the perpetrators of these senseless crimes.

In closing, the defendant asks this Court for justice, the defendant asks this Court to look at the facts of this case and to look at everyone involved in this case. The defendant asks this Court for a new trial so he can prove his innocence. The defendant would also like to asset MRPC 3.8(1)(2)(g)(Michigan Rules of Professional Conduct), which states that a prosecutor

who knows of new, credible and material evidence creating a reasonable likelihood that the defendant is innocent of the crimes for which the defendant was convicted, the prosecutor shall (1) promptly disclose the evidence to an appropriate court or authority, and (2) if the conviction was obtained in the prosecutor's jurisdiction (I) promptly disclose that evidence to the defendant, (II) undertake further investigation, or make reasonable efforts to cause an investigation to determine whether the defendant is innocent of the crime; (g) when a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction is innocent of the crime for which the defendant was prosecuted, the prosecutor shall seek to remedy the conviction." The prosecution's office was made aware of the affidavit from the victim once it was made aware to the defendant in August 2019, when the defendant sent a copy of the affidavit to the Conviction Integrity Unit, which is operating through the Wayne County Prosecutor's Office.

RELIEF REQUESTED

Defendant asks this Court to please grant this new trial, MCLS 770.1: The judge of the 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.

Date: 5-4-20

Respectfully submitted,

Michael Degraffinried

Michael Degraffinried
M.D.O.C. ID #309346
Chippewa Corr. Fac.
4269 W. M-80
Kinchleoe, Michigan 49784

Attachment
(1)

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Case No. 00-006691-01-FC

v

MICHAEL DEGRAFFENRIED,
Defendant.

AFFIDAVIT OF WILLIE WIMBERLY

BEFORE ME, the undersigned Notary, personally appeared Willie Wimberly, who being by me first duly sworn, on his oath, deposes and says:

1. My name is Willie Wimberly and I make this affidavit from personal knowledge of the matters addressed herein.
2. On June 15, 1999, I was wounded, shot in the leg, in a shooting incident that happened on Florence Street in the City of Inkster. Another person, Raymone Williams was also wounded and Alondre Davis was killed by the gunfire.
3. I saw the person who fired the shot that injured me but I did not recognize his face.
4. At the time of the shooting, I knew a guy named Michael Degraffenried who also went by the name Michael D. Michael lived down the street from me and he was a familiar face.
5. While I was in the hospital recovering from the shooting, detective Williams came to visit me and asked me if I knew the person who shot me. I told Detective Williams that I saw the shooter's face but did not know him or recognize him.
6. After I was released from the hospital, Detective Williams and Detective Greg Hill came to my house and interviewed me again. At that time they mentioned Michael Degraffenried and asked me if Degraffenried was the person who shot me. I told them Degraffenried was not the person who shot me.
7. I was called to testify at the preliminary hearing for Michael Degraffenried. I did not want to testify because I was still traumatized from the shooting and I was only 16 years old. Detective Greg Hill came to my home and escorted me to the hearing where I testified.

8. At the preliminary hearing I testified that a white car came by our location twice and on the second pass the shots were fired. I testified that a girl was driving the car but I did not recognize her face or the faces of any of the others in the car. I do not remember being asked at the hearing if Michael Degraffenried was the person who shot me.
9. The prosecutor did not subpoena me to testify at Degraffenried's trial and I did not attend the trial. I assumed that the information I gave to police and testified to at the preliminary hearing would be revealed at the trial.
10. If I had been called to testify at the trial I would have testified, as I did at the preliminary hearing, that I did not recognize the shooter and the shooter was not Degraffenried.
11. I do not recall Mr. Degraffenried's attorney ever contacting me or speaking with me.
12. I know one of the people who testified that he was present at the shooting scene and that Michael Degraffenried did the shooting. That person is my cousin, Broderick Ward. I know that Broderick Ward was not at the shooting scene because I was there.
13. I saw Broderick Ward after the preliminary hearing and I told him what I had testified to. He told me he testified that Michael Degraffenried was the shooter. I told Ward that was not true and he just shrugged his shoulders. I asked why he lied about Michael being the shooter and he told me that he did not like Degraffenried.
14. The information in this affidavit is true and accurate. I have not been promised anything, bribed or coerced in any way to make this statement and I am willing to testify under oath in a court of law.

FURTHER, YOUR AFFIANT SAYETH NOT.

Willie Wimberly
[Signature of affiant]
Willie Wimberly

Subscribed and sworn to before me on 7/29/19 in Chippewa County, Michigan.
My commission expires: 11/12/2025

Signature: S. Kinast
Notary Public, State of Michigan, County of Chippewa

S. Kinast
Notary Public - State of Michigan
County of Chippewa
My Commission Expires: 11/12/2025
Acting in the County of Chippewa

Attachment
(2)

☐ IN CUSTODY ☐ Y & W DIV.
☐ DET. BUREAU ☐ OTHER

SUPPLEMENTARY REPORT

NO. 99-6810

OFFENSE Homicide	CODE 06-2	DATE REPORTED 6-15-99	TIME REPORTED 0108	PAGE NUMBER 2			
COMPLAINANT'S NAME ALONORAE DAVIS		ADDRESS 27017 Florence 29618 Glenwood					
PHONE UNK							
PROP	VALUE	PROP	VALUE	PROP	VALUE	ADDITIONAL PROP LISTED ☐ ABOVE ☐ BELOW	SUPP
R/O's DEPARTED TO ABOVE LOCATION REF. TO SHOTS FIRED, A MAN SHOT UPON ARRIVAL R/O's OBSERVED A BLM LYING ON HIS BACK ON THE EAST SIDE OF ABOVE LISTED RESIDENCE. R/O KACLS OBSERVED A BAG OF SUSPECTED CRACK IN BLM RIGHT HAND, OFC. KACLS PLACED THE BAG OF SUSPECTED CRACK IN EVID. AND TAGGED #99-6810(15). AT THIS TIME ^{TWO} BLM (BRODERICK WARD; 26837 NEW YORK; DOB 12-8-74 AND LARRY R. ADDULLAH; 2731 CHIPPES; DOB 6-25-75) ROSE UP TO US ON THEIR BICYCLES STATING "WE SAW WHO SHOT HIM". I ASKED THEM WHO WAS IT AND THEY STATED "MICHAEL DELGROSS OFF IN RED (27334 YALE, DOB; 9-3-75) AND JERRY HUNTER (27334 YALE, DOB; 10-6-77) DID IT, IN A WHITE CELEBRITY". AT THIS MOMENT A WHITE CELEBRITY PULLED UP AND BOTH WITNESSES STATED "THAT'S THE CAR RIGHT THERE". OFC. KACLS AND I APPROACHED THE WHITE CELEBRITY, WHEN BRODERICK WARD CAME UP AND LUCKED OUT THE BACK PASSENGER WINDOW STATING "WHY DID YOU SHOOT HIM". BRODERICK WARD WAS THEN HANDCUFFED (D/L AND T/L) BY ME, AND THEN TRANSPORTED TO IPD BY OFC. TAYLOR. THE DRIVER OF THE WHITE CELEBRITY (TYPA MANNING, 26992 PASS, DOB; 3-10-80), (SHE WAS PICKED OUT BY BOTH WITNESSES AS THE DRIVER) WAS PLACED UNDER ARREST BY OFC. CROSS. THE OTHER TWO FEMALES IN THE WHITE CELEBRITY WERE INTERVIEWED BY OFC'S AND THEY STATED "WE WERE WALKING EB NEW YORK							
PROPERTY CLASS A. CURRENCY, NOTES, ETC. B. JEWELRY AND PRECIOUS METALS C. MOTOR VEHICLES D. TVS, RADIOS, CAMERAS, ETC. E. CLOTHING AND FURS F. OFFICE EQUIPMENT G. HOUSEHOLD GOODS H. CONSUMABLE GOODS		PROPERTY STATUS 1. STOLEN 2. RECOVERED 3. REC. FOR OTHER JURISDICTION 4. REC. BY OTHER JURISDICTION		THIS OFFENSE IS DECLARED: A. UNFOUNDED B. INSUFFICIENT EVIDENCE C. COMPL. REFUSED TO PROS. D. WARRANT REFUSED BY PROS. I. OFFENSE CHANGED TO		E. CLEARED BY OTHER DEPT. F. EXCEPTIONAL CLEARANCE G. CLOSED H. INACTIVE (NOT CLEARED)	
SIGNATURE OF COMMANDING OFFICER <i>[Signature]</i>		DATE 6/16/99		SIGNATURE OF INVESTIGATING OFFICER <i>[Signature]</i>		DATE 6-15-99	