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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Hon. Mark T. Slavens
Case No. 87-008305-01

-vs-

PAUL CLARK,
Defendant.

ORDER

At a session of said Court held in the Frank Murphy Hall of Justice on April 24, 2024

PRESENT: HON. HONORABLE MARK T. SLAVENS
Circuit Court Judge

In the above-entitled cause, for the reasons set forth in the foregoing Opinion;

IT IS HEREBY ORDERED that Defendant's fourth (4th) successive motion for relief from judgment seeking a new trial is **GRANTED**.

87-008305-01-FC
CRGMRJ
Order Granting Motion for Relief from Judgmen
1075173

Mark T. Slavens
Circuit Court Judge

PROOF OF SERVICE

I certify that a copy of the above instrument was served upon the attorneys of record and/or self-represented parties in the above case by mailing it to the attorneys and/or parties at the business address as disclosed by the pleadings of record, with prepaid postage on 4-24-2024

May Cu
Name

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Hon. Mark T. Slavens
Case No. 87-008305-01

-vs-

PAUL CLARK,
Defendant.
_____/

OPINION

On November 17, 1987, following a jury trial, defendant, Paul Clark, was convicted of first-degree murder, contrary to **MCL 750.316**, and weapons felony firearm, contrary to **MCL 750.227b-a.** On December 4, 1987, defendant was concurrently sentenced to "LIFE" without the possibility of parole for his murder conviction, and a consecutive two-year sentence for felony firearm. On March 1, 1990, the Michigan Court of Appeals affirmed defendant's conviction and sentence. *People v Clark*, Docket No. 171892, unpublished (1990). On December 2, 1992, this Court denied defendant's motion for relief from judgment. On November 15, 1993, this Court denied defendant's successive motion for relief from judgment. On September 30, 1994, the Michigan Supreme Court denied defendant's application for leave to appeal. On September 23, 2005, this Court granted defendant's third successive motion for relief

from judgment. On February 13, 2007, the Michigan Court of Appeals reversed this Court's decision. *People v Clark*, 274 Mich App 248; 732 NW2d 605 (2007). On July 18, 2007, the Michigan Supreme Court denied defendant's application for leave to appeal. Defendant now comes before the court on a fourth successive motion for relief from judgment pursuant to **MCR 6.502(G)**.

Defendant alleges new evidence, which was not available to him during his trial, he is seeking relief under the following issues: 1] Defendant makes a *Brady v Maryland* claim indicating the prosecutor failed to disclose material evidence that implicates Alex Scott as the person who killed Trifu Vasilije, the victim in his case. Defendant presents an affidavit from Dwight Hill, along with mugshots of Alex Scott, showing a scar on his face dated (2/16/87) which is dated after the murder of the victim, Trifu Vasilije. A) The Highland Park Police were aware or should have been aware of the similarity between defendant's case and Alex Scott's case; B) The prosecution's failure to disclose Alex Scott's similar crime (timing and location) constituted suppression of evidence under *Brady*. C) The undisclosed evidence was material because it demonstrated Alex Scott's modus operandi which is significant because defendant avers the case against him was weak. 2] Defendant's argues he is entitled to relief on the basis of the newly discovered evidence under the *Cress* standard because the new evidence creates a reasonable probability of a different outcome upon retrial. 3] Defendant argues he is also entitled to relief because he is actually innocent, and his continued detention violates both

federal and state constitutions. The court rule governing successive motions for relief from judgment, **MCR 6.502(G)** states:

> (1) Except as provided in subrule (G)(2), regardless of whether a defendant has previously filed a motion for relief from judgment, after August 1, 1995, one and only one motion for relief from judgment may be filed with regard to a conviction.
>
> (2) A defendant may file a second or subsequent motion based on a retroactive change in law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion. The clerk shall refer a successive motion that asserts that one of these exceptions is applicable to the judge to whom the case is assigned for a determination whether the motion is within one of the exceptions. **MCR 6.502(G).**

Defendant's first issue is that he suffered a Brady violation when the prosecutor failed to disclose material evidence that Alex Scott killed Trifu Vasilije. *Brady v Maryland*, 373 US 83; 83 S Ct 1194 (1963). "Where the exculpatory value of a piece of evidence is apparent, the police have an unwavering constitutional duty to preserve and ultimately disclose that evidence to the prosecutor's office." *Moldowan v City of Warren*, 578 F3d 351, 388 (2009). "Due process requires the prosecution to disclose evidence in its possession that is exculpatory and material, regardless of whether the defendant requests the disclosure." *People v Schumacher*, 276 Mich App 165, 176; 740 NW2d 534, 543 (2007). The United States Supreme Court held in *Kyles v Whitley*, 514 US 419; 115 S Ct 1555 (1995), that favorable evidence the state failed to disclose to defendant which would have made a different result "reasonably probable" in his capital murder prosecution, such nondisclosure of evidence is a *Brady* violation. The government "is

held responsible for evidence within its control, even for evidence unknown to the prosecution...without regard to the prosecution's good or bad faith." *Id* at 437. A *Brady* claim has three prongs: "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State or, either willfully or inadvertently; and prejudice must have ensued." *Strickler v Greene*, 527 US 263, 281-82; 119 S Ct 1936 (1999). Defendant argues the murder committed by Scott and his case are very similar, proximity, they occurred within two blocks of each other, timing, both murders were roughly three months apart. Both murders stemmed from robberies of white men who had solicited prostitutes, and both victims were killed by a handgun after the robbery had gone awry.[1]

When Scott was arrested in May of 1987, police had not yet made any arrests for Mr. Vasilije's murder, which had occurred three months earlier. Thus, the police should have known or been aware of the similarities in both cases and had a duty to notify the defendant that a similar crime was committed in the same area. *United States v Jernigan*, 492 F3d 1050 (2007). In *Jernigan*, a short Hispanic woman with a pockmarked face was convicted of bank robberies after five eyewitnesses identified her. Defense counsel later

[1]Prior to defendant's arrest, the Highland Park Police Department, who were investigating both Vasilije's and Krawiecki's murder cases simultaneously, possessed evidence that six weeks after the Vasilije murder, Alex Scott was found with a firearm approximately one block from where Vasilije was killed. Scott was photographed after his arrest with a fresh scar running across the left side of his face, and ten weeks after the Vasilije murder, Scott pled guilty to the murder of Krawiecki, which was committed very similarly two blocks from where Vasilije was murdered.

learned a short, pockmarked face woman had robbed several more banks after Jernigan's arrest. The Ninth Circuit, sitting *en banc,* concluded that the prosecution's failure to disclose the existence of the other robberies violated Jernigan's rights pursuant to *Brady* and entitled her to a new trial. Defendant argues his case is similar to *Jernigan's* and he is entitled to a new trial. Defendant argues the materiality prong of *Brady* is met when suppressed evidence, had it been disclosed would have created a "reasonable probability" of a different outcome at trial. *Kyles, supra.*

As both parties stipulated that the Wayne County Prosecutor's Office Conviction Integrity Unit first disclosed Scott's mugshots in 2020, thirteen years after defendant's last motion. Defendant avers had the prosecution informed him about Alex Scott and his murder of Edward Krawiecki, the defense could have investigated Scott before his trial and discovered in 1987 what the Michigan Innocence Clinic finally discovered in January of 2020: that Alex Scott was arrested in March of 1987, and his mugshot showed he had a fresh and deep wound to the left side of his face, as if he had been recently slashed with a knife.[2] Defendant claims Scott had no such wound before Vasilije's murder and his wound strongly incriminates him as the perpetrator that killed Vasilije whom defendant argues fought back while Scott was trying to rob him. Defendant now claims he could have argued Scott robbed and murdered Vasilije and the evidence at

[2] Defendant's Appendix "A."

the very least would have had a reasonable probability of a different outcome at trial. *Kyles, Id.*

Defendant further cites *United States v Jernigan*, 492 F3d 1050 (2007), in which a diminutive Latinx woman with acne or pock marks on her face was convicted of bank robbery after allegedly robbing three banks. While in custody and awaiting trial, three more bank robberies were committed in the area by a woman "whose description bore an uncanny physical resemblance" to Jernigan's. *Id.* In this case, the prosecution did not dispute its awareness of the evidence or that it was favorable to the defendant, the only dispute was for materiality. *Id.* Because according to national statistics, only six (6%) percent of all bank robbers were female, and overall (including both male and females) only six percent were identified as "Hispanic" the court determined the evidence was material and Jernigan suffered prejudice. *Id* at 1056. In the court's holding it relied heavily on the distinctive pock marks that both women had and the unusual coincidence of largely inalterable physical features, together with the low crime statistics for the defendant's sex and ethnic group.

In defendant's case, Scott is bow-legged, but does not have the same distinctive limp as defendant, they are of similar height, and ethnicity, defendant is roughly twenty (20 lbs.) pounds heavier than Scott and defendant's complexion is lighter than Scott's. However, identity is not the only issue, there are other similarities, such as both

murders took place in Highland Park, less than three months apart[3] and in the same neighborhood. In addition to the geographic and temporal proximity, the *modus operandi*[4] of the two murders are also similar suggesting they could have been committed by the same person. Especially, in light of the fact that Scott pled guilty to a similar crime ten weeks after Vasilije was killed. Scott also admitted in his guilty plea to conspiring with a prostitute to identify victims on Stevens Street.[5] Finally, both murders began as an attempted robbery but escalated to murder once the victims put up any resistance. The final piece connecting Scott to defendant's case, is Vasilije was found with a hook knife in his right hand[6] and after Scott was arrested his police mugshot revealed he had a large, fresh scar on the left side of his face.

Thus, this Court finds defendant meets the requirements to establish a *Brady* violation has inadvertently occurred, despite any good faith effort by the prosecution, defendant was denied favorable evidence that may produce a different result upon retrial. *United States v Bagley*, 473 US 667, 682; 105 S Ct 3375 (1985). This Court notes, defendant does not need to prove he would likely have been acquitted at trial, instead the question is whether defendant received a fair trial resulting in a verdict worthy of

---

[3] Vasilije was murdered on 2/16/1987 and Krawiecki was murdered on 5/2/1987.

[4] Paul Mozik told investigating officers a young woman in Ted's Bar was offering to perform sexual acts in exchange for money (Defense Exhibit "D"). Nikola Caran, bartender at Ted's Bar testified, a young- and good-looking woman followed Vasilije out of the bar onto Edgevale Street, which is the street outside the bar. (TT 11/17/1987 at 69). Finally, eyewitness, Edward Davis, testified he saw Vasilije walking with a woman outside of Ted's Bar the night he was killed. When the shooter approached Vasilije, the woman kept walking away from the scene. (TT 11/17/1987 at 74).

[5] Defense Exhibit "C".

[6] TT 11/17/1987 at 107, 143, 153.

confidence without the favorable evidence. *Id* at 434. This Court finds the evidence of the mug shot potentially links Scott to the murder in defendant's case is material and the state's failure to disclose the evidence undermines the confidence in the outcome of his trial. *Id.*

Next, defendant argues he is entitled to relief from judgment on the basis of newly discovered evidence under the *Cress* standard because the new evidence creates a reasonable probability of a different outcome upon retrial. Pursuant to *People v Cress,* 468 Mich 678; 664 NW2d 174 (2003), on the basis of the newly discovered mugshots and additional new evidence in the form of an affidavit attesting that Alex Scott confessed to committing the Vasilije murder entitles defendant to relief because the evidence is (1) itself not merely its materiality, was newly discovered; (2) the newly discovered evidence is not cumulative; (3) the defense could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) including this new evidence creates a reasonable probability of a different outcome upon retrial. *Id.* Defendant claims the Scott mugshots were not part of the evidence used by either party at his trial or during his direct appeal, and the Hill affidavit is newly discovered because it did not come to light until individuals involved in the original case voluntarily came forward to share information not previously disclosed.

Second, defendant claims the newly discovered evidence is not cumulative, as it does not resemble any of the evidence presented in his trial. *People v LoPresto,* 9 Mich

App 318, 327; 156 NW2d 586 (1968). Alex Scott was never mentioned during his trial; therefore, his mugshot evidence and Hill's affidavit provide something no other information or comparable issue previously established, which is a viable alternate suspect. These items are also impeachment evidence pursuant to *People v Grissom*, 492 Mich 296; 821 NW2d 50 (2012). Third, the defense could not with reasonable diligence have discovered this new evidence at trial. *People v Rao*, 491 Mich 271, 283; 815 NW2d 105 (2012). Defendant claims he first learned that Scott had confessed to the murder of Vasilije some 29 years after his trial, when a fellow inmate Dwight Hill told him about the prison confession. Hill took years to come forward with this information because he was scared of Scott, until his release in 2016, upon which he signed two affidavits in 2016 and in 2019. Defendant in conjunction with the Wayne County Conviction Integrity Unit finally discovered Scott's 1987 mugshots in January of 2020.

Finally, regarding the fourth prong of *Cress*, defendant argues the court must consider the full weight of the all the evidence, old and new, in determining whether there would be a reasonable probability of a different outcome upon retrial. *People v Johnson*, 502 Mich 570-72; 918 NW2d 676 (2018). Defendant claims the new evidence creates a reasonable probability of a different outcome upon retrial because it implicates an alternate murder suspect that defendant's jury did not learn about during his trial in 1987. Defendant believes the materiality standard is met by each piece of new evidence

individually and when all the evidence is analyzed collectively, there is easily a reasonable probability of a different outcome.

Historically, Michigan courts have been reluctant to grant new trials on the basis of newly discovered evidence. This policy is consistent with requiring parties to "use care, diligence, and vigilance in securing and presenting evidence." The courts have identified several evaluative criteria to apply when determining whether a new trial may be granted because of newly discovered evidence. The Michigan Supreme Court explained that 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 makes a different result probable on retrial. This test has been applied consistently for more than a century. *People v Grissom*, 492 Mich 296, 312–13; 821 NW2d 50, 59 (2012). However, this Court agrees with defendant's assessment.[7] Without reiterating the aforementioned facts, this Court finds defendant's presentation of the police mug shots of Alex Scott, which depicts a fresh, large scar on the left side of his face uncovered by the Wayne County Prosecutor's Office Integrity Unit meets the requirements of newly discovered evidence. The evidence itself is material, and not cumulative, defendant could not have

[7] *People v Ballinger Jr.*, unpublished, Docket No. 368104; 2024 Mich App LEXIS 1047 (2024).

discovered this evidence using reasonable diligence, and the admission of this evidence makes a different result probable on retrial. *Id.*

However, the affidavit signed by Dwight Hill, although signed in 2019, the defendant has previously attached an affidavit from Hill with substantially the same information.[8] That first affidavit was signed in 1990, and it includes the same information from the other affidavits he has attached in prior motions. This Court holds the affidavits from Hill, are not by themselves considered newly discovered evidence, since the original information (Scott's confession to Hill) was made known to the defendant prior to the submission of his last successive motion for relief from judgment. *Id.* However, the mugshots of Alex Scott were never presented in other motions and were not available until 2020 when they were uncovered by the Wayne County Prosecutor's Office Integrity Unit.

Defendant's final issue before this Court is that he is entitled to relief because he is actually innocent, and his continued detention violates both federal and state constitutions. Actual innocence can be a freestanding federal constitutional claim where a defendant can make a compelling showing of innocence. *Herrera v Collins,* 506 US 390, 405; 113 S Ct 853 (1993). Defendant claims his evidence is compelling and that he was convicted by a jury for another person's crime because the jury lacked evidence of two essential pieces of evidence. Defendant avers this powerful new evidence warrants

[8] People's Appendix G, Hill Affidavit.

relief under the federal actual innocence standard in *Herrera*, and the due process clauses of the Michigan Constitution. **Mich Const 1963, Art 1 §§ 16-17.** Defendant states, "while a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators." *United States v Cronic*, 466 US 648, 657; 104 S Ct 2039 (1984). Defendant argues the trial errors in his case resulted in the type of unfair fight the Michigan Judicial System cannot tolerate, and the Michigan Supreme Court explicitly warned against in *People v Ackley*, 497 Mich 381; 870 NW2d 858 (2015). Defendant claims that even if the court is not persuaded that relief is warranted on the basis of any of the other claims presented, it should grant a new trial on the basis of actual innocence.

This Court agrees waiving the good cause requirement, concluding there is a significant possibility the defendant may actually be innocent.[9] Therefore, this Court finds the defendant has met his burden pursuant to **MCR 6.502(G)**, as he has successfully made a claim of newly discovered evidence. Defendant's arguments also fulfill the good cause and/or actual prejudice standard pursuant to **MCR 6.508(D)** and his *Brady* allegations have merit entitling him to a new trial. As such, this Court holds defendant's fourth successive motion for relief from judgment is **GRANTED**.

Dated: 4-24-2024

Mark T Slavens
CIRCUIT COURT JUDGE

[9] Defendant has consistently been fighting his conviction for the last 37 years. Although the affidavits from Hill are not newly discovered evidence, and there is potential bias, as he is a friend of the defendant, the possibility that his affidavit is true, further corroborates the plethora of evidence submitted by the defendant to prove he may not have committed this crime.