

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

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

v

Case No. 75-007704-01-FC  
Hon. Christopher M. Blount

RICKY RIMMER,  
Defendant.

75-007704-01-FC  
CROPO  
Opinion/Order Signed and Filed  
1146300



OPINION AND ORDER DENYING RECONSIDERATION  
OF THE COURT'S MARCH 1, 2024 OPINION AND  
ORDER DENYING RECONSIDERATION

At a session of said Court held in the Frank  
Murphy Hall of Justice on 9-23-24

PRESENT: HON. C. M. Blount  
Circuit Court Judge

On February 11, 1976, defendant was convicted by a jury of first-degree felony murder and armed robbery, contrary to MCL 750.316 and MCL 750.529, respectively. On March 3, 1976, the defendant was sentenced to life without parole on the murder conviction, 30 to 60 years on the armed robbery conviction. The Michigan Court of Appeals affirmed defendant's murder conviction and sentence but vacated the armed robbery conviction and sentence on June 21, 1978. The Michigan Supreme Court granted leave to appeal and remanded the case for a new trial on June 29, 1982.

On remand back, the prosecution argued that the Michigan Supreme Court opinion only applied to co-defendant Jordan. The trial court disagreed and ordered a new trial for Jordan and Rimmer. The prosecutor appealed the trial court's decision, and the Michigan Court of Appeals reversed the trial court's grant of a new trial to Rimmer. The Michigan Supreme Court denied leave to appeal.

Defendant now seeks reconsideration of the the Court's March 1, 2024, Opinion and Order "denying reconsideration" of defendant's Motion for Relief from Judgment.

Defendant avers in the instant motion that the court made the following palpable errors at law.

### **Palpable error I: *Brady v Cress***

The court erred when it conflated (or confused) defendant's *Brady* claim with *Cress*, where on February 8, 2024, this Court was reversed by the Michigan Court of Appeals for committing the same error<sup>1</sup>.

The court made a palpable error at law when it failed to make an independent finding of law by adopting incorrect aspects of the prosecutor's brief. This denied defendant due process of law by adapting incorrect legal theories in the prosecutor's brief.

Defendant avers that although he raised a claim of newly discovered *Brady* evidence, the court reviewed the claim under *Cress*. However, this court notes that as in this case the *Cress* test applies to newly discovered evidence claims raised via motion for a new trial or motion for relief from judgment. *People v Rogers*, 335 Mich App 172 (2020).

Indeed, to receive relief based on a claim of newly discovered evidence, a defendant must show that the new evidence makes a different result probable on retrial. That is not the case here because 45 years after the trial, defendant got two of his Coconspirators to sign affidavits that he was not involved in the murder even though there was identification by a lay witness as the person who chased and robbed the victim. As such, defendant is not entirely entitled to relief because a retrial would probably not have been different.

### **Palpable Error II**

The court erred when it conflated MCR 6.502(G)(2) with *Cress*. However, this court opines that it did not confuse MCR 6.502(G)(2) with *Cress* by stating that for a new trial to be granted based on newly discovered evidence, a defendant must use the four prongs of *Cress*, supra. In fact, this court opines that, "the trial court has the right to determine the credibility of newly discovered evidence for which a new trial is asked".<sup>2</sup>

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<sup>1</sup> *People v Ballinger*, \_\_\_ NW2d \_\_\_ 2024 Mich App, LEXIS 1047, at \*1 (Ct App, Feb. 8, 2024) ("The trial court erred in two distinct respects. First, in analyzing defendant's argument under *Cress*...");

<sup>2</sup> *People v Johnson*, 502 Mich at 567 Quoting *Connelly v United States*, 271 F2d 333, 335 (CA 8, 1959).

It is at the opinion of this Court that *Cress* applies to newly discovered evidence claims raised via a Motion for a New trial or Motion for Relief from Judgment, *People v Rogers*, 335 Mich at 172 (2020). In consideration of the *Cress* test this court turns its attention to the newly discovered evidence or more specifically, the affidavit information. The 4th part of *Cress* pertains to sufficient credibility.

The court should consider all relevant factors in assessing credibility.<sup>3</sup> Indeed, to receive relief based on a claim of newly discovered evidence, a defendant must show that the new evidence makes a different result probable on retrial. As mentioned previously, here, 45 years after trial, defendant has attained affidavits from two of his coconspirators to sign that he was not involved in the murder, despite having been identified by a lay witness as the person who chased and robbed the victim. The prosecutor argued, and this court agrees, that defendant is not entitled to relief because a retrial would probably not have a different result.

### Palpable Error III

Defendant argues that the court erred in adopting the prosecution's erroneous position on MRE 609 whereas defendant contends instead that MRE 6.08 applies to the officer's reputation for having a character for untruthfulness which was paramount as they were the only non-recanting witnesses to testify against the defendant. Charges that do not result in a conviction are not governed by MRE 609. However, the People argue MRE 6.09 allows a party to use evidence of a criminal conviction to impeach a witness's character for truthfulness.

### CONCLUSION

Defendant concludes his argument by asserting that the prosecution has incorrectly stated, cited or relied upon outdated provisions of court rules and attempted to mislead the Court. Defendant argues further that this Court repeats verbatim the People's response to his motion. However, this Court opines that the arguments contained within the People's response are factually accurate, comply with established legal doctrine, and respond to defendant's averments.

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<sup>3</sup> *People v Stewart*, unpublished. (Docket number 360477, 4/20/23) (Wayne)

For the reasons set forth above, defendant's Motion for Reconsideration of the Opinion and Order Denying Reconsideration of the Court's March 1, 2024, Opinion and Order is DENIED.


DATED: 9-23-24



Christopher M. Blount  
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 9-25-24

Name: 

For the reasons set forth above, defendant's Motion for Reconsideration of the Opinion and Order Denying Reconsideration of the Court's March 1, 2024, Opinion and Order is DENIED.

DATED: 9-23-24



Christopher M. Blount  
Circuit Court Judge

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| <b>PROOF OF SERVICE</b>  |
| <i>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 _____.</i> |
| Name _____   |