

STATE OF MICHIGAN
IN THE COURT OF APPEALS
(On Appeal from Wayne County Circuit Court)

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

vs.

COA Case No. _____
LC Case No. 96-009620-01-FC
Hon. Kiefer J. Cox
(Wayne County Circuit Court)

STEVEN WILLIAMS,

Defendant-Appellant.

**DEFENDANT-APPELLANT'S DELAYED
APPLICATION FOR LEAVE TO APPEAL**

BRIEF IN SUPPORT

EXHIBITS

PROOF OF SERVICE

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STATEMENT SUPPORTING DELAYED APPLICATION TO APPEAL

Defendant files his instant delayed Application for Leave to Appeal from the circuit court's Opinion and Order denying his Motion for Relief from Judgment (Ex 1, Opinion).

In denying Defendant's Motion for Relief from Judgment, the circuit court found Defendant satisfied the first three requirements of *Cress*, but ultimately concluded the recently discovered new evidence and would not have made a difference at trial. In reaching this conclusion, the trial court made several inaccurate factual assertions and applied an incorrect legal standard in denying Defendant's motion.

Defendant now files his instant Delayed Application for Leave asserting the circuit court abused its discretion in denying Defendant's motion. There is no prejudice to the prosecution in Defendant filing a delayed Application.

INTRODUCTION

Defendant was convicted and sentenced to life in prison for the 1995 shooting death of Landis Davis outside the Blue Note Lounge in Detroit. The shooting took place following an altercation in the bar which spiraled into a chaotic scene. In the years following his conviction, Defendant has maintained his innocence claiming that he was not the shooter. The contested issue at trial was identification.

Recently, William Bonner confessed to the crime for which Defendant was convicted. Bonner explained that he sometimes helped out as a bouncer at the bar and he described, in detail, all of the events surrounding the shooting. Bonner provided an affidavit detailing his involvement and confessing to the murder of Landis Davis. With the help of a forensic firearm examiner, Defendant also recently uncovered evidence that the forensic bullet evidence that was used against him at trial was fabricated in a way that supported the prosecution's case. Armed with this newly discovered evidence, Defendant filed a successive Motion for Relief from Judgment.

In September 2024, the trial court conducted an Evidentiary Hearing in this matter at which time Defendant offered expert testimony regarding the fabricated ballistic evidence and Mr. Bonner's in-court confession. After sitting on Defendant's motion for more than two years, the trial court ultimately denied the motion for the reason that Mr. Bonner, "was unable to offer the Court the name of any other individuals that worked at the club during the time." (Exhibit 1, Order, pg 10). In this regard, the lower court's decision doesn't even try to apply the controlling credibility standard set forth in *Johnson*.

As for the fabricated bullet evidence, the trial court acknowledged that while "there

is a discrepancy” in the forensic reports, the corrected forensic reports would have made no difference at trial because, “a jury already had time to consider the evidence in question.” Ex 1, Order, pg 6-7. On this point, the trial court’s ruling that Defendant’s newly discovered forensic evidence fails to satisfy the *Cress* standard is plainly wrong.

In recent years, it has more than obvious that the Wayne County Circuit Court is a hostile and ineffectual forum for adjudicating motions for relief from judgment under MCR 6.500 *et seq.* Collectively, the circuit court routinely denies nearly all such motions using the most spurious of reasons.¹ In denying these motions for relief from judgment, the circuit court has all but discarded the controlling standards set forth in *People v Cress*, 468 Mich 678 (2003) and *People v Johnson*, 502 Mich 541 (2018) in favor of simply substituting its own judgment in place of a reasonable jury.

Apart from the lower courts’ inability to apply the controlling standards set forth in *Cress* and *Johnson*, the Wayne County Circuit Court is also slow rolling these cases such that defendants are waiting years for the court to hear and decide these motions. In this case, Defendant’s motion was pending for more than two years before a decision was issued, and that decision came only after Defendant filed with this Court a Complaint for Superintending Control. See COA Dkt # 374278. The prolonged and excessive delays in hearing and deciding the instant Motion for Relief is not an isolated occurrence from Wayne County.

The undersigned counsel was forced to file another original action for superintending control in the case of *People v Russ*, COA Case No. 369274, Wayne County Case No. 84-

¹ There have been a slew of reversals from this Court and/or the Michigan Supreme Court reversing the Wayne County Circuit Court’s denials of these motions for relief.

004677-01-FC. In that case, counsel filed a Motion for Relief in April 2023 after which the motion sat without any action by the court for approximately nine months before counsel filed an original action for superintending control. See COA Dkt # 369274. Within days of filing such action, the court issued a simple Order directing the prosecutor to respond (an Order that could have, and should have, issued shortly after the motion for relief was filed).²

In another case, *People v Brooks*, Wayne County Case No. 97-500882-01-FC, the undersigned counsel filed another Motion for Relief from Judgment in August 2023, and that action remained pending for more than a year and a half until it was denied only recently and again only after counsel filed another original action for superintending control. See COA Dkt # 373601.

Based on the above, it appears that the Wayne County Circuit Court is attempting to normalize these lengthy, unreasonable delays in its handling of these motions. In each of these old murder cases, counsel has presented credible new evidence of actual innocence, yet the claims fall on deaf ears and are subject to interminable delays. And in most instances, the motions are always denied anyway, so the court is simply running out the clock on these defendants and adding years before any appellate review can be taken.

The lower court's reasoning in support of its order denying Defendant's Motion for Relief does not comport, in the least, with the controlling standards that govern claims of newly discovered evidence. Accordingly, this Court should grant immediate peremptory relief and reverse the lower court's decision and remand this matter for new trial.

² The *Russ* matter was ultimately denied by the court after pending for 560 days (or 1 year 6 months, and 11 days). The *Brooks* pending motion for relief was only recently denied after counsel filed another Complaint for Superintending Control.

STATEMENT OF THE QUESTION PRESENTED

- I. Should this Court grant Defendant's Application and reverse the lower court's decision denying his Motion for New Trial where the trial court abused its discretion by making several factually incorrect findings, ignored the credibility standard set forth in *Johnson*, and failed to properly apply the fourth prong of the *Cress* standard where it found that a credible confession by another individual would not have made probable a different result on retrial?

Defendant/Appellant answers "Yes"

Prosecution/Appellee answers "NO"

The Trial Court would answer "NO"

STATEMENT OF JURISDICTION

Defendant seeks leave to appeal from the Wayne County Circuit Court's Opinion and Order dated February 14, 2025, denying Defendant's Motion for Relief from Judgment (**Exhibit 1**)(**Exhibit 2**, Register of Actions). This Court has jurisdiction over the instant application for leave to appeal pursuant to MCR 7.205(A) and MCR 6.509(A).

STATEMENT OF FACTS

On November 19, 1995, Landis Davis, was fatally shot and killed around 2:00 a.m. outside the Blue Note Lounge on Plymouth Road in Detroit. The shooting took place after an altercation in the bar between two groups of patrons, one of which group included Defendant Williams and his co-defendant, Trenell Whitworth. The other group included the decedent Landis Davis who was at the lounge with his cousin Anjorel Hammond, Hammond's girlfriend Angela Hill, and Alvin Woodford.

There was much confusion and chaos both inside and outside the bar leading up to the shooting. The witness statements given to police on the night of the murder provided a hodgepodge of various conflicting descriptions of the events and the shooter(s). Despite these various descriptions, there seemed to be general agreement as to certain facts: (1) there was an altercation inside the lounge between one group that included Defendant and the second group that included the decedent; (2) following this altercation, the group that included Defendant was expelled from the lounge by the bouncer and at least one other individual who appeared to be assisting the bouncer; (3) after the first group was excluded, the second group that included decedent got into another altercation with the bouncer(s) during which decedent was hit in the head with a flashlight, which caused decedent to start bleeding and during which the bouncer (or an individual who was assisting the bouncer) fired a warning shot inside the bar which caused the second group to exit the lounge; (4) after exiting the lounge, decedent, Hammond, Hill, and Woodford were attempting to get into a vehicle that was parked right outside the lounge; (5) while they were trying to get into the vehicle an individual(s) standing in Plymouth Road started running up toward their car

firing shots; (6) Hammond, Hill, and Woodford all ran from the car but decedent Davis was hit in the chest with a bullet and went to the ground; and, (7) after Davis went to the ground he was shot a second time in the back of the head and that an individual was seen standing over his body.

No suspects were taken into custody on the night of the murder. In the following days, Whitworth was identified in a live line-up by Hammond, Hill, and another patron of the bar named Traylor. Whitworth was later charged with the first-degree murder of Davis. After Whitworth's line up, Defendant Williams was identified in a photo show-up by Hammond and Hill and charged with first-degree murder and assault with intent to murder Anjorel Hammond. At the conclusion of a bench trial, Whitworth was found guilty of the lesser offense of assault with intent to murder Davis. At a separate jury trial, Defendant Williams was found guilty on both the first-degree murder of Davis and the assault with intent to murder Hammond.

Evidence Technician and bullet casings from the scene

Shortly after the shooting, DPD evidence technician Robert F. Collinash was dispatched to the crime scene. Collinash identified and placed into evidence six shell casings and one "spent copper jacket bullet" that were located in Plymouth Road and around the vehicle where Davis was shot, and also near the exit door to the lounge (**Exhibit A**, Evidence Tech Report). Collinash's report and scene sketch depict each of the six shell casings and the spent bullet as "A" through "G. He also tagged two blood samples as "H" and "I."

Of the six shell casings that were placed into evidence, Collinash noted that three of

the casings were .45 caliber Remington-Peters fired cartridge cases (tagged as B, C, and D), and the other three casings (tagged as E, F, and G) were .45 caliber Winchester fired cartridge cases. **Exhibit A**, Evidence Tech Report). As will be explained below, Collinash's Evidence Tech Report was false.

Trial Testimony

Trial in this matter commenced on April 7, 1997, with Anjorel Hammond called as the prosecution's first witness. According to Hammond, he and his girlfriend Angela Hill went to the Blue Note Lounge around 11:00 p.m. after smoking some marijuana. There, they met up with Hammond's cousin Landis Davis and Alvin Woodford. Trial Trans Vol 1, pg 98-100. At approximately 1:00 a.m., Hammond observed Woodford and Defendant Williams get into an altercation whereupon Hammond's group and Williams' group began fighting which eventually led to Williams and his group being ejected from the bar by "the bouncer [who] started grabbing them, and pushing them . . . shoving them out the door[.]" TT Vol 1, pg 101-06. During this time, Hammond told his girlfriend Hill to leave the bar and pull their car around to the Plymouth door exit. TT Vol 1, pg 110-12.

After Williams and his group were removed from the bar, Davis "got into it with the bouncer." *Id* at pg 108. Hammond described his cousin Davis, at that point, as being "in a rage." *Id*. Then "one of the guys who was with the bouncer, he had fired a shot. He had fired a shot in the bar" which prompted Hammond's and Davis's group to leave the bar. *Id* at 109; *see also Id* at pg 163 (testifying that the guy who fired a shot in the bar wasn't the bouncer, but "another guy" who was "a friend of the bouncer.").

Upon exiting the bar from the Plymouth door exit, Hammond, Davis, and Woodford

went to their car which Hill had pulled around and parked on the grass between Plymouth Road and the sidewalk. According to Hammond, Defendant Williams ran from across Plymouth Road toward their car and started shooting at Davis at which point Hammond and Woodford ran to the side of the bar. TT Vol 1, pg 112-14. When Hammond returned back to the front of the bar (on Plymouth Road), he claims to have observed Defendant Williams standing over Davis, who was, at that time, laying on the ground. *Id* at 114-15. Hammonds claims that Williams then proceeded to chase him through the bar parking lot while firing his weapon at him after which Defendant allegedly got into a burgundy Impala which was parked in the lot and continued chasing and shooting at Hammond from the Impala. Hammond claims that he was able to escape by jumping a fence into a yard behind the bar. *Id* at pg 117-19. Hammond admitted that he never actually saw Davis get shot. *Id* at pg 185.

Officer Collinash next testified about the evidence that he collected from the scene and placed into evidence. TT Vol 2, pg 6-7.

Like Hammond, Angela Hill testified that a dispute took place between Woodford and Williams that turned into a physical altercation between the two groups after Williams threw a bottle that hit Davis in the face. TT Vol 2, pg 35-37. Hill exited the bar a minute or two after Williams' group was ejected and went to pull their car up to the Plymouth door exit. Hill then exited the car, opened the trunk, then began kicking on the bar exit door to alert her group that she was outside. TT Vol 2, pg 38-39, 86. After Davis, Hammond, and Woodford exited the bar and were standing on the passenger side of their vehicle, Williams approached the car from the opposite side of Plymouth and began shooting at Davis. TT

Vol 2, pg 40-42. Hill further testified that Whitworth was also shooting at Davis. Hill ran to the bar parking lot where she met back up with Hammond and Woodford. *Id* at pg 42-43.

Hill further testified that on December 7, 1995, she picked Williams out of a photo line-up and said that Williams, “looked like the shooter” but admitted that she was only kind of positive because Williams had a hat on that he was not wearing in the bar. *Id* at pg 45-46.

In January 1995, Hill identified Whitworth in a live line-up. TT Vol 2, pg 50. Although Hill testified that Williams was the one who shot Davis, she admitted that when she identified Whitworth in his line-up, she indicated that “Whitworth” was the one she saw running up to the car; he had the gun shooting him.” TT Vol 2, pg 65-67. Hill further testified that Whitworth shot Davis “while he was already down.” *Id* at pg 65.

Woodford’s testimony mirrored that of Hammond’s and Hill’s insofar as the events that took place up to the point where Williams was allegedly running towards the car shooting after they exited the bar. However, Woodford testified that he did not actually see Davis get shot. TT Vol 2, pg 108-09.

Juan Morris testified that he was the parking lot attendant at the Blue Note Lounge on the night of the shooting. TT Vol 2, pg 145. Morris indicated that he observed a girl exit the bar, pull a blue car up on the sidewalk at the bar door exit, get out of the car, and knock on the exit door. Morris then saw a group of people come out of the bar and one of the individuals had injuries to his face. TT Vol 2, pg 146-48. As he turned to call the police, Morris heard gun shots and ducked out of the way. When he got back up, he observed a dark-skinned individual standing on the passenger side of the car shooting. Morris testified that he saw three men with guns. *Id* at pg 148-50, 156, 165.

Morris identified Williams as an individual holding a gun, but he indicated that he did not observe Williams do any shooting. TT Vol 2, pg 151. Morris also testified that he gave the police inaccurate descriptions of the three men with guns because the owner of the bar did not want the bar to get closed down. *Id* at 154-55.

Dr. Kanlean testified for the Wayne County Medical Examiner's Office and indicated that the cause of death was due to one gunshot wound to the head, and another to the left side of the chest. Dr. Kanlean also testified that Davis had a small abrasion on the left side of his forehead. TT Vol 2, pg 6-8.

Next, the parties entered into a stipulation "as to the analysis of the evidence that was collected at the scene." TT Vol 3, pg 10. In short, the parties stipulated that if Detroit Police Department Officers David Pauch or Paul Hartzell were to testify, they would testify consistent with their forensic reports, that evidence tags 236348, 236349, and 236353 (marked as "B""C" and "G" on Collinash's report) each contained a .45 caliber Remington-Peter fired cartridge case, and that a microscopic comparison of these evidence tags yielded that they "were fired from the same weapon" but a different weapon than the evidence tags 236350, 236351, and 236352 (marked as "D" "E" and "F" which contained .45 caliber Winchester Western fired cartridge cases.³ TT Vol 3, pg 10. The parties further stipulated to, "the admittance of all evidence in this case which contains the photo showup, the line-up sheet, the photographs, the evidence tech reports, the ballistic report, the morgue protocol

³ As discussed in more detail herein, a recent forensic examination of these bullet casings conducted by firearms examiner David Townshend reveal that DPD Evidence Tech Collinash's evidence report was fabricated (or false) in a way that helped support the witnesses' testimony about where Defendant Williams was standing when he allegedly fired shots at Davis. The recent reexamination of the bullet casings found at the scene are actually consistent with Bonner's confession.

and all the photographs . . . marked as People Proposed Exhibits 1 through 19.” *Id*

Maurice Traylor testified that he was a patron at the lounge on the night of the shooting. He observed an altercation between Williams, his friends, and other individuals. Traylor indicated that a bouncer hit Davis in the head with a flashlight after Williams and his group exited the bar, and that Davis was bleeding because of this, and not by being hit with a glass by Williams. Traylor also indicated that a bouncer fired a gun inside the bar, prompting people to exit the building. TT Vol 3, pg 71-75.

Traylor testified that he was outside when he observed Williams and another individual running towards a man that was getting into a car, whereupon he observed both men fire weapons at the man getting into the car, and that after the man fell, Williams ran up and shot him again. TT Vol 3, pg 75-76. Traylor indicted that Williams was wearing a Coogie sweater. However, when confronted with his statement to the police on the night of the shooting, Traylor described the shooter as being a regular at the bar. He admitted that the regular he was describing was in fact Whitworth. Traylor admitted that he had never seen Williams before in his life prior to the incident. *Id* at pg 80-85. Traylor also said that when Davis exited the bar, before the two men began shooting at Davis, Davis went around and reached into the open trunk of the vehicle. *Id* at pg 91.

In closing arguments, the prosecution stated, “[t]his case revolves around identification” or “who did it?” TT Vol 4, pg 7. The prosecution argued that after Defendant Williams and his group were removed from the bar, and after Davis and his group left the bar, that Whitworth and “the other shooter” came up from the street, and that Defendant Williams was in front of the driver side of the car while Davis, Hammond, Hill

and Woodford were on the opposite side of the car and then “boom, boom, boom . . . shots were going off.” *Id* at pg 10.

According to the Prosecutor, a shot hit Davis, “through his left side of his chest and out the right side” and that he “comes around and [Davis is] down and that’s when the shot goes into the rear of his head.” *Id* at pg 10-11. The Prosecutor further argued, “he’s [i.e., Davis] been executed by this man [i.e., Williams], even Mr. Whitworth working in conjunction with each other, aiding and abetting each other.” *Id.*⁴

The defense in its closing also focused on the issue of identification: “how consistent is that identification?” TT Vol 4, pg 29. The defense went on to point out the inconsistencies between the witnesses’ descriptions of the shooter and the events. *Id* at 33-35 (“this is an example of people not being able to get their stories straight. People not knowing who shooters are but being told by others who are not[.]”).

The jury returned a guilty verdict later that afternoon.

Newly Discovered Evidence

In April 2022, Defendant Williams was housed with another inmate named James Powell, who was previously housed with an inmate named William Bonner. According to Powell, Bonner confessed to him that he was responsible for a murder that took place at the Blue Note Lounge in the 1990s (**Exhibit B**, Powell Affidavit). Upon hearing this information, Williams, who has always asserted his innocence for Davis’s murder, asked his family to retain Private Investigator Scott Lewis who interviewed Bonner.

⁴ The prosecutor later argued that under an aiding and abetting theory, “it didn’t matter if Mr. Whitworth fired the fatal shot or Mr. Williams fired the fatal shot, they’re all working together and they know what they’re going to do.” TT Vol 4, pg 12-13.

1. William Bonner's confession

Bonner confessed to Scott Lewis his involvement in Davis's murder outside the Blue Note Lounge. Bonner attested to guilt in a sworn affidavit (**Exhibit C**, Bonner Affidavit). According to Bonner, he was the person who was helping the bouncer inside the lounge on the night of the murder and was involved in the altercations leading up to the shooting. Bonner provided numerous factual details of the murder all of which are supported by the record evidence.

In particular, Bonner described how "just before closing . . . a fight broke out involving two groups of people. There were four or five people in each group. I helped a bouncer who went by the name of Big Mike put the first group of people out of the bar, but the second group refused to leave." *Id* at ¶ 4. According to Bonner, the second group, which included Davis, "started fighting with us and they threatened to kill me. The man that I ended up shooting and killing threw a glass and hit me in the face. Big Mike then hit the man in the head with his flashlight. At that point, I fired a shot into the floor from my .45 caliber handgun to get the second group of people to leave." *Id* at ¶ 5.

Bonner next details how he "followed the guys who were threatening me out the front door of the bar, which is on Plymouth Road. The guy who threw the glass at me went straight to the open trunk of a blue four-door Ford Taurus parked on the grass next to the sidewalk, just outside the front door of the bar. The Taurus was facing east." *Id* at ¶ 6. Bonner then describes how, "[s]tanding near the front door of the bar, I shot the guy in the chest; he fell face down on the sidewalk inside the open door of the blue Taurus. I then shot him a second time in the back of the head from about 4 feet away." *Id* at ¶ 7. Bonner

attests, “someone was firing a gun in my direction from the middle of Plymouth Road. I thought he was firing at me, so I fired back while I was then standing in the little driveway behind the Ford Taurus.” *Id* at ¶ 8. Bonner then fled the scene and called a friend to pick him up after which he “got rid of my gun in the Detroit River.” *Id* at ¶ 8.

2. Recent Forensic Analysis and Report by forensic firearms examiner David Townshend.

In addition to Bonner’s recent confession, Defendant also submitted the report of former Michigan State Police firearm’s examiner and forensic expert, David Townshend, who conducted an evaluation of the bullet evidence in this case (**Exhibit D**, Townshend Report and Affidavit). In his report, Townshend concludes that DPD forensic reports and analysis and trial testimony is inaccurate insofar as Pauch concluded that evidence tag numbers 236348, 236349, and 236353 (marked as “B” “C” and “G” on DPD evidence technician Collinash’s report) were fired from the same weapon. **Exhibit D**, Townshend report, pg 4 (“Remarks regarding lab reports f95-0909 & f95-0910) and pg 5 (“[t]he testimony of Officer Pauch regarding the identification of the fired cartridge cases on Firearms Analysis Lab No’s. f95-0909 and f95-0910 conflicts with the Evidence Technician report of Officer Collinash[.]”).

Townshend further concludes that Pauch’s analysis and trial testimony was also inaccurate insofar as Pauch opined that evidence tag numbers 236350, 236351, and 236352 (marked as “D” “E” and “F” on DPD evidence technician Collinash’s report) were fired from the same weapon but different than the weapon that fired “B” “C” and “G.”

In short, Pauch concluded that the bullet casings collected from the scene and marked on Collinash’s sketch as “B” “C” and “G” were fired from one weapon, while the

casings marked as “D” “E” and “F” were fired from a second weapon. According to Townshend’s forensic analysis, Pauch’s findings were wrong because Collinash’s report was false. Townshend concludes that the shell casings marked as “B” “C” and “D” were fired from one weapon while “E” “F” and “G” were fired from a second weapon. This is a significant discrepancy considering the witnesses’ testimony about where they allege Williams was located when he allegedly fire shots at Davis.

Moreover, Townshend’s recent forensic analysis supports Bonner’s confession because Bonner’s description of where he was standing when he shot and killed Davis is consistent with the evidence casings marked as “B” “C” and “D.” Townshend opines that “B” “C” and “D” were fired from the same weapon (not “B” “C” and “G” as Pauch erroneously concluded based on Collinash’s false evidence tech report). In sum, Townshend’s forensic analysis, which was not known at the time of trial, supports Bonner’s confession and description of the events.

Trial Court Opinion Denying Defendant’s Motion for Relief from Judgment

On February 14, 2025, the trial court issued its Order denying Defendant’s Motion for Relief from Judgment. In its Order the court erroneously noted, “[b]ased on the nature of the Defendant’s allegations and the Court’s review of the record, the Court determines that an evidentiary hearing is not necessary.” (**Exhibit 1**, Opinion, pg 3). This is wrong. The court did, in fact, conduct an Evidentiary Hearing in this matter on September 11, 2024 (**Exhibit 3**, Evid Hearing Trans, 9/11/24).

Apart from the court’s erroneous assertion that an Evidentiary Hearing was not necessary, the court rejected the merits of Defendant’s claims of newly discovered evidence.

As to the fabricated forensic evidence the court first acknowledged that, “there is a discrepancy between the report authored by Officer Collinash and the reports authored by Office Pauch and Sergeant Hartzel.” Ex 1, Order, pg 5.

As to the fourth prong of *Cress*, the trial court concluded that the newly discovered forensic evidence would not have made a different result probable at retrial because, according to the trial court, “a jury already had time to consider the evidence in question.” This too is a complete mystery. How would the jury have discerned that the forensic evidence was fabricated?

Turning to Bonner’s confession, the trial court concluded that Bonner’s confession would not make probable a different result on retrial (how a credible confession from another individual could not make probable a different result on retrial is a complete mystery). In reaching this conclusion, the trial court discounted Bonner’s confession because, “Mr. Bonner allegedly worked at the Blue Note Lounge for over two years at the time of the incident, but he was unable to offer the Court the name of any other individuals that worked at the club during that time.” Ex 1, Order, pg 10. Not only was the court’s finding wrong (Bonner did identify at least one other individual who worked there), but it is also an improper credibility assessment by the court that conflicts with the “patently incredible” standard set forth in *Johnson*.

Under *Johnson*, the trial court’s task was to determine whether the newly discovered evidence was patently incredible such that no reasonable juror could credit such testimony. Despite the fact that there was no evidence presented from which to find Bonner’s confession patently incredible, the trial court simply substituted its own judgment for that of

a reasonable juror and hung its hat on the lame reason that no reasonable juror could credit Bonner's testimony because he couldn't remember the names of other people who worked at the bar in 1995. Such is not the proper application of *Johnson*.

The trial court's analysis is deeply flawed, internally conflicted, and does not apply the correct standards set forth in *Cress* and *Johnson*. This Court should grant immediate consideration of Defendant's Application for Leave to Appeal, peremptorily reverse the trial court's decision denying his Motion for Relief from Judgment, and remand this matter for new trial.

ARGUMENT

I. The trial court abused its discretion by denying Defendant's motion for new trial where the court made several factually incorrect findings, ignored the credibility standard set forth in *Johnson*, and failed to properly apply the fourth prong of the *Cress* standard where it found that a credible confession by another individual would not have made probable a different result on retrial.

A. Standard of review

An appellate court reviews for an abuse of discretion a trial court's decision to grant or deny a motion for new trial. *People v Johnson*, 502 Mich 541, 564 (2018)(citing *People v Cress*, 468 Mich 678 (2003)). "An abuse of discretion occurs when a trial court's decision falls outside the range of reasonable and principled outcomes." *Id* (quoting *People v Franklin*, 500 Mich 92, 100(2017)).

A trial court's factual findings are reviewed for clear error. MCR 2.613(C). Clear error occurs only if the reviewing court is left with a definite and firm conviction that the trial court made a mistake. *Id*. Moreover, an appellate court need not refrain from scrutinizing a trial court's factual findings nor may an appellate court tacitly endorse

obvious errors under the guise of deference. *People v McSwain*, 259 Mich App 654, 683 (2003).

Here, the trial court's Opinion denying Defendant's Motion for Relief was based on several factually incorrect findings which compel reversal.

B. Standard for granting a motion for relief

Subchapter 6.500 of the Michigan Court Rules provides for post-appeal relief from judgment in criminal cases. Upon satisfying the threshold requirement of presenting, "new evidence," a defendant must next demonstrate entitlement to relief under MCR 6.508(D)(3), which provides that a court may not grant relief to a defendant, "if the motion alleges grounds for relief that could have been previously raised, unless the defendant demonstrates both good cause for failing to raise such grounds earlier as well as actual prejudice." *People v Johnson*, 502 Mich 541, 565 (2018). Good cause is established by showing that some external factor prevented counsel from previously raising the issue. "Actual prejudice," on the other hand, means:

- (i) in a conviction following a trial, but for the alleged error, the defendant would have had a reasonably likely chance of acquittal; or,
- (ii) [omitted];
- (iii) in any case, the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case[.]

MCR 6.508(D)(3)(b)(i), (iii).

Defendant asserts that he was entitled to relief under both subsections (i) and (iii) as

set forth above, as Defendant presented newly discovered evidence in the form of a credible confession from another individual as well as newly discovered forensic evidence.

C. Standard for reviewing newly discovered evidence

Under *People v Cress*, 468 Mich 678 (2003), a new trial is appropriate on the basis of newly discovered evidence if: (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. *Cress*, 468 Mich at 692.

1. Bonner's confession is not patently incredible under *Johnson* such that Defendant satisfies each prong of the *Cress* standard.

In denying Defendant's motion, the trial court found that Bonner's confession was not credible such that it would not make probable a different result on retrial. In reaching this conclusion, the trial court noted, "while the testimony and confession of Mr. Bonner does align with the facts of this case, . . . [a]ll of the testimony elicited from Mr. Bonner was directly laid out in *Williams v Withrow*, 328 F Supp 2d 735 (ED Mich 2004).⁵ This is completely false. Contrary to the lower court's Opinion, Bonner testified as to a myriad of details none of which were contained within, or referenced by, the federal court's opinion in *Williams v Withrow*.

For example, *Williams v Withrow* makes no mention of the following facts all of which Bonner had knowledge of and testified to during the evidentiary hearing:

⁵ *Williams v Withrow* was an Opinion by the federal district court denying Defendant's federal habeas claims.

1. Make and color of the victim's car (Evid Hrg Trans, pg 126, ln 21-24);
2. Make and caliber of gun he used (i.e., Glock .45)(Evid Hrg Trans pg 113, ln 11-12, pg.129, ln 16-21; see also Lab Reports #F95-0908);
3. direction of victim's car facing East (Evid Hrg Trans pg 161, ln 12-17; Ex 1);
4. location of casings (B,C,D), (Evid Hrg Trans pg 127, ln 22-24, pg129, ln 1-2, 11-14);
5. described driveway behind victim's car from where he fired his weapon and where shell casing "D" was found (Evid Hrg Trans pg128, ln 2-3, Ex 1, Ex D, Townshend report pg 5);
6. described location of victim's gunshot wound to chest (Evid Hrg Trans pg123, ln 15-19; Ex E, Autopsy Report);
7. described trunk of victim's car being opened (Evid Hrg Trans pg 122, ln 12-13; TT Vol 2, Hill Testimony, pg 86 ln 19-23; TT Vol II, Morris Testimony, pg 176, ln 7-9; TT Vol 3, Traylor Testimony, pg 30 ln 13-14);
8. described how victim reached into trunk (Evid Hrg Trans pg 122, ln 21, TT Vol 3, Traylor Testimony, pg 91 ln 1-22);
9. described shooting victim in "back off the head" while on the ground (Evid Hrg Trans pg127, ln 1-4; Ex E, Autopsy)(*Williams v Withrow*, 328 F Supp2d 735, 739, only states that "as Hammond ran to the side of the bar he heard Hill say that Davis was shot in the head")
10. identified and described another bouncer at the bar by the name of Big Mike (Evid Hrg Trans pg 114, ln 6-7);
11. identified and described Mr. Clark from the Blue Note Lounge (Evid Hrg Trans, pg 162, ln 12-17);
12. described how victim hit in head with flashlight by bouncer Big Mike, (Evid Hrg Trans,

pg 118, ln 11, TT Vol 3, Traylor Testimony, pg 75 ln 12-16);

13. described exactly location where he shot the victim after “he fell face down on the sidewalk inside the open passenger door of the blue Taurus,” and further described the physical characteristics of victim as “heavy set, with brown skin” (See Exhibit C, Bonner Affidavit, ¶ 7-9)

14. described the victim’s group exiting the door onto Plymouth Road (Evid Hrg Trans, pg 120, ln 21-25, TT Vol 1, Hammond testimony, pg 169 ln 10-24, TT Vol 2, Hill pg 77, ln 5-6);

15. described how he fired his gun “into the floor” in the bar (Evid Hrg Trans pg 117, ln 23-25, TT Vol 1, Traylor testimony, pg 88 ln 10-12)(*Williams v Withrow* only says bouncer fired a shot);

16. described how the victim "was real, threatening to kill him (Evid Hrg Trans pg 120, ln 4-6, TT Vol 1, Hammond testimony pg 108, ln 8-11)(Bonner’s testimony on this point was corroborated by the trial testimony of Hammond and Hill who testified that Davis was in a rage, and wanted to fight with the bouncers).

As Bonner’s testimony makes clear, he was able to offer numerous details about the events surrounding the shooting, and most of those details were not – as the trial court concluded – “directly laid out in *Williams v Withrow*.” If the trial court would have done even a cursory review of the *Withrow* opinion as compared to Bonner’s testimony it would have realized its findings were both inaccurate and demonstrably false. See MCR 2.613(C)(providing that factual findings by a trial court may be set aside where clearly erroneous).

The trial court made other factual errors in its analysis too. The trial court erroneously stated, “Mr. Bonner worked at the Blue Note Lounge for over two years at the time of the incident, but he was unable to offer the Court the name of any other individuals that worked at the club during that time.” (Ex 1, Order, pg 10). This too is wrong, as Bonner testified that he “help[ed] the bouncers . . . off and on, from the end of ’94, all the way to ’95.” Evid Hrg Trans pg 112, ln 13-18. To the extent that the trial court concluded that Bonner worked at the Blue Note Lounge “for over two years,” that was factually incorrect. Bonner’s testimony reveals that he worked at the bar, at most, for a year. Plus, Bonner identified another bouncer at the bar named Bike Mike and “the guy that hired me . . . I think his last name was Clark, Mr. Clark.” Evid Hrg Trans, pg 162, ln 9-14. Clearly, the trial court did not adequately review the record given these numerous glaring factual errors.

Next, the trial court erroneously held that “Mr. Bonner’s confession directly contradicts multiple witnesses’ trial testimony, including an employee that worked at the Blue Note Lounge, that identified Defendant the [sic] shooter in this incident.” Ex 1, Order, pg 10. This too is wrong. Juan Morris is the only employee from the bar who testified at trial, and while Morris said he saw Defendant there at the bar, he did not see Defendant “doing any shooting.” TT Vol 2, 4/8/97, pg 151, ln 17-18. Thus, to the extent that the trial court rejected Bonner’s testimony because an employee, “identified Defendant [as] the shooter[,]” the trial court was factually inaccurate on this point too. Relying on incorrect factual assertions to reject an otherwise credible confession is an abuse of discretion for which this Court should reverse the lower court’s Order.

Apart from the trial court’s erroneous factual findings, there is nothing in the record

form which to find Bonner's confession patently incredible. For starters, Bonner knew the date, time, and location of the murder, the general identity of the victim and provided a motive for his actions. Bonner admits that he was the individual who helped the bouncer, known as "Big Mike" at the Blue Note Lounge remove one group, which included Defendant, from the lounge. Bonner recounted, "a fight broke out involving two groups of people" and that he "helped a bouncer who went by the name of Big Mike put the first group of people out of the bar, but the second group refused to leave." Bonner further describes, "[t]hey started fighting with us and they threatened to kill me. The man that I ended up shooting and killing threw a glass and hit me in the face. Big Mike then hit the man in the head with his flashlight. At that point, I fired a shot into the floor from .45 caliber handgun to get the second group of people to leave." (**Exhibit C**, Bonner affidavit, ¶ 4-5).

Bonner's description of the events is also supported by the numerous witness statements and trial testimony. Several of the trial witnesses testified about the altercation between the two groups, and how Williams's group was removed from the bar. Hill testified that she exited the bar after Williams' group was removed and pulled their car up to the Plymouth door exit. The car was parked on the grass just as Bonner details in his affidavit, and Bonner also detailed how the trunk to the car was open which is consistent with Hill's testimony. TT Vol 2, pg 38-39, 86.

There was also witness testimony that patrons of the bar were patted down for weapons. Bonner, on the other hand, indicated that he worked, "odd jobs at the bar on some weekends to make extra money" which would explain how he was able to have a weapon inside the bar – and fire it at Davis's and Hammond's group when they refused to leave.

This fact also supports Bonner's description that he had his weapon and was able to shoot Davis, "[s]tanding near the front door" after he "followed the guys who were threatening me out the front door of the bar." Exhibit C, Bonner Affidavit, ¶ 6-7.

Traylor testified that the bouncer hit Davis in the head with a flashlight, which is consistent with Bonner's description of events. Traylor also indicted a "bouncer fired a gun inside the bar prompting people to exit the building." TT Vol 3, 71-75. Hammond similarly testified that Davis, "got into it with the bouncer" and that the guy who fired a shot in the bar wasn't the bouncer but "another guy" who was "a friend of the bouncer." TT Vol 1, pg 108, 163. All of these facts are consistent with Bonner's testimony and description of events.

Bonner's confession is further supported by the autopsy report of the Wayne County Medical Examiner. Bonner describes how he "followed the guys who were threatening me out the front door of the bar, which is on Plymouth Road. The guy who threw the glass at me went straight to the open trunk of a blue four-door Ford Taurus parked on the grass next to the sidewalk, just outside the front door of the bar. The Taurus was facing east." Bonner further describes how "[s]tanding near the front door of the bar, I shot the guy in the chest; he fell face down on the sidewalk inside the open passenger door of the blue Taurus. I then shot him a second time in the back of the head from about 4 feet away." (**Exhibit C**, Bonner affidavit, ¶ 6-7). Bonner's descriptions are entirely consistent with the autopsy report, forensic bullet evidence, and witness testimony

At trial, Wayne County Medical Examiner, Dr. Kanluen, testified that the victim, Landis Davis, died of "two gunshot wounds on the body, one to the back of the head and

one to the left side of the chest.” Trial Trans Vol II, pg 6. Dr. Kanluen’s testimony thus further supports Bonner’s description of the events and how he shot the victim.

Bonner also confessed his responsibility for the murder to another inmate named James Powell while Bonner and Powell were housed together at Edgar Handlon Correctional Facility in Ionia, Michigan (**Exhibit B**, Powell affidavit). There, Powell, “became well acquainted with William Bonner” and the two “engaged in conversation on a personal level at random times throughout the years[.]” *Id* at ¶ 2-4.

During one of their conversations, Bonner told Powell about, “a case that he said he found on the library computer in which someone else had been convicted of a murder that [Bonner] said [Bonner] committed in the 1990’s at a bar in the city of Detroit Michigan called the Blue Note Lounge.” *Id* at ¶ 5.

In April of 2022, Powell was transferred to Oaks Correctional Facility in Manistee where he met, for the first time, Steven Williams. *Id* at ¶ 7. According to Powell, after meeting Mr. Williams, Powell learned from Williams that Williams was incarcerated for a murder that he did not commit that took place at the Blue Note Lounge in 1995. *Id* at ¶ 8. Putting Bonner’s and Williams’ statements together, Powell “realized that the two stories could possibly be the same incident.” *Id* at ¶ 9. Powell then relayed to Williams the substance of his February 2022 conversation with Bonner. *Id* at ¶ 10. Powell testified at the Evidentiary Hearing consistent with – and confirmed all of the averments of – his affidavit. Evid Hrg Trans, pg 77-86.

Thus, in addition to Bonner’s confession to the murder of Davis outside the Blue Note Lounge, Bonner’s statements (against his penal interest) to Powell are further

admissible evidence of Bonner's guilt and Williams' innocence.

Adding further support to Bonner's confession is the recent forensic analysis conducted by firearm's examiner and forensic expert David Townshend. According to Bonner, "standing near the front door of the bar, I shot the guy in the chest; he fell face down on the sidewalk inside the open passenger door of the blue Taurus." (**Exhibit C**, Bonner affidavit, ¶ 7). Collinash recovered a .45 caliber shell casing near the Plymouth Road door exit which is marked as "C" on the sketch. Bonner then states: "I then shot him a second time in the back of the head from about 4 feet away." *Id* ¶ 7. Another .45 caliber shell casing was recovered nearer to the vehicle which is marked as "B" on Collinash's sketch. Bonner then indicates that "someone was firing a gun in my direction from the middle of Plymouth Road. I thought he was firing at me, so I fired back while I was then standing in the little driveway behind the Ford Taurus." *Id* at ¶ 8. Another .45 caliber shell casing was recovered from the driveway described by Bonner which casing is marked as "D" on Collinash's sketch.

Bonner's description about where he was when he fired his weapon (near the door of the bar, closer to the victim/car, and from the "little driveway" behind the car) is entirely consistent with shell casings "B" "C" and "D" being fired from the same weapon, which is what Mr. Townshend concluded in his recent forensic analysis.⁶ Bonner further indicates

6 By switching the "D" and "G" on his evidence tech report, DPD firearms examiner Pauch concluded, erroneously, that the shell casings labeled as "B" "C" and "G" "were fired from the same weapon" while concluding that "D" "E" and "F" were fired from a second weapon. TT Vol 3, pg 10. The parties all seem to agree that Pauch's conclusions were wrong because Collinash's evidence tech report was wrong. The parties don't agree on the import of the forensic error. It is Defendant's position that the prosecution relied on, and benefitted from, the erroneous/false labeling of the shell casings.

that he used a .45 caliber Glock handgun which is consistent with the three shell casings that were found where Bonner indicates he fired his weapon.

In sum, there is nothing patently incredible about Bonner's confession. Given Bonner's knowledge and description of the events surrounding the shooting, a reasonable juror could easily accept such testimony and find Defendant not guilty. To the extent that the trial court found that Bonner's testimony would not make probable a different result on retrial, the trial court relied on incorrect facts and applied an erroneous credibility standard.

In *People v Johnson*, 502 Mich 541, 567 (2018), our Supreme Court made clear that "[a] trial court's function is limited when reviewing newly discovered evidence, as it is not the ultimate fact-finder[.]" In *Johnson*, the Supreme Court emphasized, "if a witness is not patently incredible, a trial court's credibility determination must bear in mind what a reasonable juror might make of the testimony, and not what the trial court itself might decide, were it the ultimate fact-finder." *Johnson*, 502 Mich at 568. In short, a witness's testimony must be "patently incredible" in order to be reasonably discounted by a jury. It has already been made clear that Bonner's testimony was, in fact, credible – or at the very least, it was not patently incredible.

As *Cress* makes clear, the focus of the evidentiary hearing in this matter was narrow and limited to the court's determination of whether Bonner was "patently incredible." Bonner was not patently incredible. To the contrary, he testified in great detail about the events leading up to the shooting, and his testimony was corroborated by the testimony of other witnesses as well as the newly discovered forensic evidence. There was simply

nothing to render Bonner's confession 'patently incredible.'⁷ See *People v Johnson*, 502 Mich at 570 ("A reasonable juror also could have credited the fact that [the witness] lacked any motive to lie in this case.").

Once the court determines whether a reasonable juror could find the newly discovered evidence credible, it must, "consider the impact of that testimony in conjunction with the evidence that would be presented on retrial" to determine whether a different result is probable. *Id* at 571. This includes consideration of the evidence admitted during the first trial and the evidence that would be admitted at a second trial. *Id*. Here, Defendant easily satisfies this prong because both Bonner confessed to the crime for which Defendant was convicted.

To the extent that the trial court noted that were other witnesses at trial who identified Defendant as the shooter, the court's focus under *Cress* does not rest on whether there is other inculpatory evidence of Defendant's guilt apart from the new evidence. Rather, the *Cress* standard requires the Court to consider whether the new evidence/testimony would make probable a different result on retrial. In this instance, the answer to that question is yes; a different result on retrial is probable given that: (1) the defense at trial was misidentification; (2) neither Hammond nor Woodford saw the victim get shot; (3) Hill, who picked Defendant out of a lineup but qualified her identification as

⁷ An example of a witness being patently incredible would be if a witness were to claim he was at the scene of a shooting but the prosecution were to prove that the witness was incarcerated at the time of the shooting. That is an example of a patently incredible witness. In this instance, the prosecution failed to show in any meaningful way that Bonner's testimony and/or confession was patently incredible. Having failed to do so, the only remaining question for the Court is whether Bonner's new testimony would make probable a different result on retrial which it does as explained above.

not entirely certain, and Hill also testified it was Whitworth (Defendant's co-defendant) who shot the victim (TT Vol 2, pg 45-46, 65-67); and, (4) Juan Morris, who worked at the bar, testified that he saw Defendant there but he didn't see Defendant do any shooting (TT Vol 2, pg 151).

And as the Innocence Project has correctly highlighted, "[m]istaken eyewitness identifications contributed to approximately 70% of the more than 350 wrongful convictions in the United States overturned by post-conviction DNA evidence." INNOCENCE PROJECT, EYEWITNESS MISIDENTIFICATION <http://www.innocenceproject.org/causes/eyewitness-misidentification/> (last visited May 12, 2019); *see also State v Delgado*, 188 NJ 48, 60, 902 A2d 888 (2006)(noting that eyewitness misidentification has been "widely recognized as the single greatest cause of wrongful convictions in this country."); *State v Henderson: A Model for Admitting Eyewitness Identification Testimony*, 84 U Colo L Rev 1257, 1260 (2013); *see also People v Blevins*, 314 Mich App 339 (2016)(J Shapiro, dissenting)(citing to *Delgado* and opining that "eyewitness misidentification has been 'widely recognized as the single greatest cause of wrongful convictions in this country.'").

As these facts make clear, the disputed issue of identification was far from clear at trial. To the extent that the trial court concluded otherwise, the trial court did so by simply substituting its own judgment in place of what a reasonable juror could decide. In substituting its own judgment to conclude that Bonner's testimony could not make probable a different result on retrial, the trial court abused its discretion.

If a jury were to hear Bonner's testimony alongside the less-than-certain eyewitness identifications, it is likely that the jury would return a not-guilty verdict. At a minimum, the

Court should not have confidence in Defendant's conviction considering the newly discovered evidence. Because a reasonable juror could credit Bonner's testimony so as to make probable a different result on retrial, the Court should grant Defendant's application and remand this matter for a new trial.

2. Newly discovered forensic evidence

In addition to Bonner's recent confession, Defendant also submitted a recent forensic examination report by forensic firearms examiner David Townshend. According to Townshend, the shell casings recovered from the scene and labeled as "B" "C" and "D" were all fired from the same weapon. While Collinash marked the location of these shell casings as "B" "C" and "D" on his sketch of the scene, he switched "D" with "G" on his Evidence Technician Report (**Exhibit A**, Collinash scene sketch). Defendant only recently discovered that the evidence was improperly labeled after his family retained Mr. Townshend to review the forensic evidence.

In rejecting Mr. Townshend's recent forensic report as a basis upon which to grant relief, the trial court made two factual errors in its analysis denying Defendant's motion. First, the court concluded, "Mr. Townshend found that there was no falsity in the two reports, but rather just a mistake in the evidence report or the analysis in the writing of the reports." (Ex 1, Order, pg 4). The trial court further compounded its factual error when it concluded that, "Mr. Townshend's report does not arrive at a conclusion as to which bullet casings matched which firearms. Rather, Mr. Townshend's report recommended that the evidence be retested by the Michigan State Police Det." (Ex 1, Order, pg 6). The trial court's factual findings regarding Mr. Townshend's report are wrong.

Contrary to the lower court's analysis, on page 5 of Townshend's report, dated March 11, 2020, Townshend clearly states:

it would appear that items "E", "F" & "G", the .45 ACP caliber Winchester fired cartridges were probably fired in the same firearm. And evidence items "B" and "C", .45 ACP caliber Remington-Peters fired cartridge cases which are located south of vehicle #1, were probably fired in the same firearm. Evidence item " D" which is also a .45 ACP caliber Remington-Peters fired cartridge case is located to the west of items "B" and "C" and to the North and West of vehicle #1, in the crime scene sketch.

In other words, Townshend's report directly calls into question the accuracy of the forensic evidence that was collected by Collinash as Collinash had switched evidence labels "D" with "G." In this instance, Collinash's false and/or fabricated forensic analysis supported the prosecution's witnesses insofar as they testified about Defendant's location(s) from where he allegedly fired a weapon at Davis.

For example, Hammond and Hill both testified that Defendant ran from across Plymouth Road toward their vehicle and started shooting, and then came around the car and was standing over Davis with a gun after Davis had been hit and fell to the ground. Collinash's fabricated evidence tech report supported such witness testimony insofar as the prosecution offered the testimony of its firearms examiner Pauch who opined that shell casings "B" "C" (both of which shell casings were recovered on the passenger side of the vehicle) and "G" (which shell casing was recovered in Plymouth Road) were fired from the same weapon. In other words, the fabricated forensic analysis supported the witnesses' testimony.

For instance, Pauch, relying on Collinash's fabricated evidence tech report,

concluded that “B” “C” and “G” were fired from the same weapon. The “C” shell casing was recovered just outside the Plymouth door exit. There is no witness testimony that places Defendant just outside the Plymouth door exit while firing a weapon. Bonner, on the other hand, indicates that he fired a shot that hit Davis in the chest while he was “[s]tanding near the front door of the bar[.]” **Exhibit C**, Bonner Affidavit, ¶ 8. This is likely the shell casing marked as “C.” Bonner further indicates that he then shot Davis, “a second time in the back of the head from about 4 feet away.” This is likely the shell casing marked as “B.” Then Bonner indicates, “[s]omeone was firing a gun in my direction from the middle of Plymouth Road. I thought he was firing at me, so I fired back while I was standing in the little driveway behind the Ford Taurus.” This is likely the shell casing marked as “D.”

In his report, forensic expert David Townshend concludes, contrary to the DPD’s analysis, that the shell casings marked as “B” “C” and “D” were likely fired from the same weapon (Bonner’s). Based on these newly discovered facts, there is little doubt that the police and/or prosecution offered fabricated forensic analysis to support the prosecution’s theory of its case. On this point, it should be noted that, in closing, the prosecution specifically pointed to the false forensic report as support for the witnesses’ testimony. See TT Vol IV, pg 10, ln 8-15 (prosecution arguing: “and up from the street comes the other shooter as well as Mr. Whitworth and they’re shooting. And casings are being ejected. And you’ll see the evidence tech report shows that.”).

In rejecting this newly discovered forensic evidence, the trial court concluded, erroneously, that:

The findings in Det Lt Bergeron’s report arrived at the same conclusion of the evidence that was offered into evidence during

Defendant's trial which indicates that a jury already had time to consider the evidence in question. Given that a jury was able to use the lab reports during their deliberations, and newly published lab reports arrive at the same conclusion as the original lab reports, a different result is not probable at retrial.

Ex 1, Order, pg 7. This too is wrong. Collinash falsely identified ET# 236353 (labeled as "G") as a WW (Winchester), but Det Lt Bergeron confirmed it was actually a Remington-Peters .45 auto casing. Mr. Townshend has now confirmed that Collinash switched "G" and "D."

Considering the new evidence from Townshend's report concerning Collinash's false evidence tech report, it most certainly cannot be said, as the trial court found, "Bonner was [not] able to offer any facts not already established through court record." To the contrary, Bonner's confession concerning where he fired his weapon from conflicts with Collinash's report and trial testimony (both of which were false). At the same time, Bonner's confession is bolstered by Townshend's report. If it were true, as the trial court suggested, that Bonner simply parroted facts known from trial, why would he provide details of the shooting that were contradicted by the (false) forensic evidence offered at trial? The fact that Bonner's confession coincides with the true/accurate forensic evidence that was only recently uncovered through Mr. Townshend's examination makes Bonner's confession more credible, not less.

In sum, Townshend's new forensic report concerning the discrepancies found in Collinash's report corroborates the exact locations where Bonner stated under oath he fired his weapon from, and would more likely than not, in conjunction with Bonner's confession, result in a reasonable probability that the result of his jury trial would have been different.

To the extent that the trial court denied Defendant's motion, it did so by abusing its discretion, relying on erroneous and inaccurate facts, and applying a heightened credibility standard that conflicts with *Johnson*.

CONCLUSION AND RELIEF REQUESTED

For these reasons, Defendant respectfully requests that this Honorable Court grant his instant Application for Leave to Appeal, reverse the judgment of the trial court, and remand this matter to be retried.

Respectfully submitted,

LAW OFFICE OF MICHAEL R. DEZSI, PLLC,

Dated: March 25, 2025

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CERTIFICATE OF COMPLIANCE OF WORD COUNT

As required by MCR 7.212(B)(1)(3), I certify that Defendant-Appellant's Application contains 10,111 words, excluding the parts of the document that are exempted.

Dated: March 25, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that Defendant-Appellant's Application for Leave to Appeal, Appendix of Exhibits, Exhibits 1-3, A-E, and this Certificate of Service were served upon the following at their respective email addresses on March 25, 2025 via the Court's ECF system:

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