

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff Appellee,

Trial Court No: 04-12890-01

Hon. Timothy M. Kenny

-v-

THELONIOUS SEARCY,

Defendant-Appellant. ,

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Kym Worthly  
Wayne County Prosecutor  
1441 St. Antoine  
Frank Murphy Hall of Justice  
Detroit, Michigan 48226

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Thelonious Searcy #535985  
Defendant In Pro Per  
Chippewa Correctional Facility  
4269 West M-80  
Kincheloe, Michigan 49784

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DEFENDANT'S BRIEF IN SUPPORT OF MOTION

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By: Thelonious Searcy # 535985  
Defendant In Pro Per  
Chippewa Correctional Facility  
4269 West M-80  
Kincheloe, Michigan 49784



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STATEMENT OF FACTS

Mr. Searcy adopts by reference the Statement of Facts presented in prior pleadings in this case. Additional facts are set forth within the present Motion and Brief in Support.



I. WHERE THE TRUE PERPETRATOR OF THE CRIME FOR WHICH DEFENDANT SEARCY STANDS CONVICTED HAS CONFESSED, THE CONFESSION CONSTITUTES NEWLY DISCOVERED EVIDENCE OF DEFENDANT'S ACTUAL INNOCENCE, ENTITLING HIM TO A NEW TRIAL UNDER PEOPLE V CRESS, 468 MICH 673 (2003), AND SCHLUP V DELO, 513 US 298 (1995); AND (B) DEFENDANT IS ENTITLED TO AN EVIDENTIARY HEARING TO MAKE A RECORD OF HIS NEWLY DISCOVERED/NEWLY RELIABLE EVIDENCE.

The facts of Defendant Searcy's case are basically straight forward.

On September 5, 2004, Jamal Segars was sitting in his silver Corvette with Brian Minner seated in the passenger seat, when a man approached and shot into the vehicle, killing Segars and wounding Minner.

The prosecution theory was that Defendant Searcy had an ongoing feud with one DeAnthony Witcher, who also drove a silver Corvette, and that on the day of the shooting, Defendant Searcy (mistakenly) killed Segars and wounded Minner thinking that Segars' silver Corvette belonged to DeAnthony Witcher. Just as the prosecution claimed at trial that Defendant Searcy killed the victim by mistake, Defendant Searcy submits that in light of his "new evidence," the State of Michigan has convicted the wrong man. On December 27, 2015, Vincent Smothers executed an affidavit, which states in part:

"I'm coming forward with this information about the murder of JAMAL SEGARS, because I heard it's a innocent man sentenced, for this crime, I want to tell the truth about every vile murder, I committed in the CITY OF DETROIT. I want to give all of my victims family closure for their love one's death.

On SEPTEMBER 6, 2004, approximately around 9:00 P.M., me & my man JEFFEREY DANIELS approached a silver (2) door 2004 Corvette. The driver was this guy name JAMAL SEGARS, on the street, we called him "Q". He was a certified "Dope Boy", from the Buffalo Projects off of Nevada Him & his brother "Walla" was getting money for real I had been on these boy's trail for 6 mths. strait, tracking they every move. The only thing about these two boy's was their crew they stayed 20 deep. It was



me & JEFFEREY goal to catch these boy's solo. If I catch these boys solo I could easily get 20 or 30 thousand from either brother's pocket.

After tracking these boy's moves for months, we caught "Q" by his self, at the CITY AIRPORT on CONNER'S. We spotted "Q" sitting in traffic headed towards GRATIOT with his top down on his corvette, talking on his cell-phone. Shortly after we spotted "Q", JEFFEREY parked his 4 door blk Lumina on FINDLEY & CONNER'S then we proceeded toward's "Q" corvette. As me & JEFFEREY approached "Q's" corvette a tall 6 foot 3 African American male, wearing dark jeans with a with button up shirt, approached "Q's" passenger door with a phone in his right hand. When the guy got into the car, I told JEFFEREY fuck-it, let's go.

JEFFEREY pulled out his chrome & black HK 45, and continued walking towards the rear of the corvette, through traffic. Soon as we got to the trunk of the corvette "Q" looked back at me. Without any hesitation I fire three shot's. from my chrome & black HK 40 into "Q's" back. Soon as I fired, JEFFEREY fired into the air, when he fired into the air, the passenger ducked down as if he was grabbing something from the floor. I proceeded to fire (3) more times into the left side of "Q" from the driver side, then I fired a fatal shot towards his head, As I stood over him, I snatched \$300 dollars from his left hand, then I fled back to JEFFEREY'S car.

As I got into the car, an unmarked BLACK DETROIT POLICE SQUAD CAR, CROWN VICTORIA, crashed into a 4 door Burgundy Maranda in front of a SHELL GAS STATION on CONNER'S. Seconds after the two cars collided head on, the passenger cop which was a Caucasian male, got out, wearing a gray hood and black pants firing shot's at JEFFEREY. The driver of the police car, appeared to be hurt, his airbag's were deployed. I never saw the driver get out of the squad car.

After the passenger from the squad car fired at JEFFEREY, JEFFEREY took off running with the crowd of people, then he returned to the car, I sped down FINDLEY TO GUNSTON, then I took GUNSTON TO GRATIOT. I drove down GRATIOT towards 8 MILE. I pulled into a store parking lot on NOVARRA & GRATIOT. While I was there, I told JEFFEREY to get rid of the (45). He tried to convince me to let him keep the pistol. I wasn't having it.



I pulled out my "40" from my hip, letting him know that I wasn't playing. Fearing the consequences, he told me he would sell it. After we agreed on him selling the pistol, I told him to lay low & don't speak on this shit, then I got out of the car

Two weeks after the incidence at THE ALL BLACK PARTY, JEFFEREY was killed on SEPTEMBER 21, 2004 trying to sell a fake kilo of drywall, on BALFOUR & WHITTIER. A few months after JEFFEREY was killed they arrested a guy that looked like JEFFERY FOR "Q" murder, that shit fucked me up. I needed to come forward with this murder as I done in previous case " (Affidavit of Vincent Smothers, dated December 27, 2015).

Without any doubt, the affidavit of Vincent Smothers constitutes newly discovered evidence. The test for a new trial based upon newly discovered evidence consist of the following: 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. See People v Cress, 468 Mich 678, 692 (2003). Under MRE 804(b)(3) a statement against ones penal interest is not hearsay if:

"A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless it to be true."

Since the confession is made against Smothers' penal interest, as such, the confession is considered to be admissible evidence. The confession here in question admits that Vincent Smothers shot and killed Jamal Segars and wounded Brian Minner. This confession affirmatively excludes Defendant Searcy of having



any knowledge of the events in question, (i.e., the murder of Segars and the shooting of Minner). This is extrinsic evidence of the actual innocence of Defendant Searcy. The purpose of citing MRE 804(b)(3) is based on the premise that people generally do not make damaging statements about themselves unless those statements are true. The State of Michigan has convicted an innocent man.

The confession by Vincent Smothers was never presented to Defendant Searcy jury. Moreover, the non-hearsay confession of Vincent Smothers dovetails with the eight alibi witnesses who testified for the defense that Defendant Searcy was attending a family barbecue at the time of the shooting. Furthermore, Defendant's grandmother, Edna Richardson, testified that Jeffrey Daniels, brought a gun to her apartment in August of 2004 and left it there, (the gun which the police later recovered). Ms. Richardson testified that the gun did not belong to Defendant.

The only evidence presented by the prosecution linking Defendant to the crime was the highly questionable identification testimony of Tiffany King, Latasha Boatright, Kimberly Jeffries, and Dwayne Dye.

Tiffany King testified that she was in the area of Conner and Whithorn when she saw a man run up from behind a Corvette and start shooting into the driver side of the car. (T2, 78-80). Ms. King further testified that the man then ran between a gas station and a store. (T2, 91). Ms. King identified the man as Defendant Searcy. Ms. King admitted that she had never seen Defendant before and did not attend a line-up.

Latasha Boatright testified that she was in a parking lot south of Conner and Whithorn talking with some friends, when she heard gunshots and saw a man shooting into a silver Corvette. (T2, 98). Ms. Boatright testified that she heard other gunshots and although she did not see another shooter, she assumed that the police were shooting. (T2, 100-101). Ms. Boatright further testified



that she saw the shooter walk through the crowd, went through the parking lot to a brick wall, then came back out and went inside the store, she then ran through an alley, up Whithorn street where she saw the man coming out of the alley. (T2, 101-102). Ms. Boatright identified the man as Defendant Searcy. Ms. Boatright initially testified that she heard Defendant say something to three men surrounding him, but then admitted she was not sure if it was Defendant speaking. (T2, 103-104). There was testimony during trial that while attending a photo-lineup, Ms. Boatright told the police that Defendant Searcy stated: "I told that mother fucker I would get him." (T2, 8; T5, 14). Ms. Boatright testified that she identified Defendant at a photo line-up. (T2, 126).

Kimberly Jeffries testified that she was in the area of Conner and Whithorn and heard a gunshot, a pause, then another shot, and saw a man standing by the driver's side shooting into a silver Corvette. (T2, 168-169). Ms. Jeffries further testified that she heard shots coming from two different guns, but did not see another shooter. Ms. Jeffries testified that she saw the man run in the direction of a parking lot with the police chasing him. (T2, 182). She identified Defendant Searcy as the man doing the shooting, she further testified to identifying Defendant at a photo line-up.

Dwayne Dye testified that he was in the area of Conner and Whithorn passing out flyers. (T3, 38-39). Dye testified that he was at a gas station when he heard two shots and saw a six-foot tall man shooting into a Corvette. Dye testified that he gave chase, but could not catch the man (T3, 42). Dye further testified that he heard two more gunshots and ducked down, but did not see the police shooting. (T3, 64-65). Dye testified that the man he saw shooting was Defendant Searcy. He also identified Defendant from a photo line-up. (T3, 42-44)

Officer Hull testified that that he heard 5 to 10 shots being fired, then



heard another volley of 5 to 10 shots. He testified that he could not be sure if shots came from the same gun or not. (T3, 114-115). Officer Hull goes on to testify that he got out of the car and chased a 6'2, 200 pound person wearing a white T-shirt and baseball cap (T3, 111-112). Officer Hull saw this person run down a street and jump into a car which sped away. (T3, 111-113). He did not see the person run into a store. (T3, 137).

Officer Stallard testified to hearing about 20 gun shots, saw a person standing in the street firing a blue steel automatic gun. (T3, 139-141). He could not identify the person, who was about 6'2, 180-200 pounds, wearing a baseball cap and light colored shirt (T3, 139-140). Officer Stallard did not see the person run into a store. (T3, 146-147).

Officer Herzog testified that he saw a person running eastbound, but could not identify him as the shooter (T IV, 13, 23, 25). Furthermore, Officer Herzog did not see the person run into a store. (T3, 146-147).

The identification testimony in this case is very troubling when compared with the three police officers testimony. These officers are trained to observe events, for example, Dye testified that he saw Defendant Searcy "shooting into the Corvette, that he was 6 foot tall, 150 pounds, that he chased Defendant, but could not catch him," Officer Hull gave a detailed description: "6'2, 200 pounds, wearing white T-shirt, baseball cap, he chased the person to a car, where he jumped in and sped away." If Dye "chased" the man, he should have (1) saw officer Hull also giving chase, (2) should have seen the person jump into a car that sped off. But he nor officer Hull testified to running across each other during the chase, furthermore, officer Hull is trained in observation, and could not identify the person (who was close enough for him to attempt to catch), verses Dye, who is not trained in observation, but was able to identify the person.



When Dye was asked if he would be able to identify the person again, Dye admitted to telling the police that "I don't know about the face, but if he had on the same clothes I could identify him." The problem with this statement is that Dye never gave a description of the man's clothing, how is it possible for Dye to identify Defendant at a line-up if he could not remember what his face looked like? Ms. Boatright testified that she saw Defendant shoot into the car, walk through a crowd, went through the parking lot, to a brick wall, come back out and went into a store, she later saw Defendant come out of an alley, and heard Defendant say something to three men around him, but later admitted that she could not be sure if that person talking was Defendant. Oddly, there is no testimony that she saw Dye or officer Hull chasing the person. She further admitted that she knew DeAnthony Witcher, and that after the shooting she had ran to the car to see if Witcher was in it. More importantly, Ms. Boatright, according to testimony at the trial, stated to police at the photo line-up that Defendant had said "I told that mother fucker I would get him." This statement is very revealing, in that her friend, Mr. Witcher testified that Defendant had made threatening telephone calls to him stating that he was going to "get him at a club," when the shooting took place the crowd was attending an event at a club (the Black Party). Its not a coincidence that Ms. Boatright imputed such a statement to Defendant Searcy.

Ms. Jeffries testimony is important in that she testified to seeing Defendant shoot into the car and saw a police officer chase him. Jeffries was able to do something that three trained officers could not, identify Defendant as the shooter. However, there appear to be a common thread with Jeffries and Boatright -- they both knew the alledge intended victim, DeAnthony Witcher, she too, ran up to the Corvette, to see if Witcher was the victim, nor did she see Dye chasing the person. Here, you have police officers highly trained in