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CIU Dismisses Two Co-Defendant's Cases Based Upon Newly Discovered Evidence of Brady Violation by DPD Officer

Statement of Prosecutor Kym Worthy

"The CIU discovered evidence in this case that was never turned over to the prosecutor or the defense attorney. This simply cannot be tolerated. These defendants were denied a fair trial. The family of the deceased was also denied certain justice," said Prosecutor Worthy. The criminal justice system only works if all the entities do their jobs properly and ethically at every juncture. They cannot take short cuts, bend cases to fit their version of the facts, or be deceitful in any way."

Statement of Attorney Katherine Marcuz for Anthony Legion

Katherine Marcuz said, "It has taken nearly twenty years to correct the immense injustice that occurred against Mr. Legion. The State Appellate Defender Office is thankful to the CIU for righting this wrong. We have been impressed with Mr. Legion's perseverance and optimism throughout the process, and we look forward to seeing him begin the next chapter of his life."

Statement of Attorney Kristina Dunne for Marvin Cotton

"Marvin Cotton and I are grateful to the CIU for the countless hours they devoted to his case. I am humbled by Mr. Cotton and his family's perseverance over the last 20 years and I wish them all the very best," said Kristina Dunne.

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Facts of the Case

On January 24, 2001 at approximately 1:55 a.m., Jamond McIntyre was at a house in the 3900 block of Third Street in Detroit. He fled from the location because he was pursued by two men who fired multiple gunshots at him. He fell in an alley across the street from the house and succumbed to his wounds. A male neighbor saw two people but could not identify them.

There were two female witnesses who saw Mr. McIntyre with three black males shortly before the shooting and neither identified Mr. Cotton or Mr. Legion as being one of the men they saw. A male eyewitness that was a crucial identification witness at trial initially did not identify the perpetrators despite later claiming to have known two of them. Three weeks after the homicide, the same male eyewitness offered information to a DPD homicide investigator, who was the officer in charge of the case (OIC). The eyewitness was shown a photo array and selected Mr. Legion, Mr. Cotton and a third man as the perpetrators. This identification was an important factor in charging the three defendants in this case.

Anthony Legion and Marvin Cotton were charged with First Degree Murder and Felony Firearm in connection with the January 24, 2001 murder of Jamond McIntyre. Mr. Legion and Mr. Cotton were tried together and convicted by jury of Murder 1st Degree and Felony Firearm on October 19, 2001. They were sentenced to Life in Prison without Parole and two years for the Felony Firearm on November 14, 2001.

The third defendant faced the same charges. His case was dismissed after DPD confirmed his alibi. The dismissal was entered on October 26, 2001 after Mr. Legion and Mr. Cotton were tried and convicted. This effectively prevented the third defendant from testifying in Mr. Legion and Mr. Cotton's trial.

These cases all centered on the issue of identification. The witness in Mr. Legion and Mr. Cotton's cases who testified at trial was the same male identifying witness in the third defendant's case, along with a male jail house informant.

Anthony Legion Procedural History

Mr. Legion pursued his direct and collateral appellate rights and a motion for relief from judgment is pending before the Judge Bridget Hathaway. Legion filed a petition for writ of habeas corpus that has been stayed pending review by CIU and a determination of the motion for relief from judgment. Mr. Legion has maintained his innocence.

Marvin Cotton Procedural History

Mr. Cotton pursued his direct and collateral appellate rights and a motion for relief from judgment is pending before the Judge Bridget Hathaway. Mr. Cotton has maintained his innocence.

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CIU Investigation and Recommendations for Mr. Legion

This case is not an exoneration. CIU recommends Mr. Legion's convictions be vacated on the ground that his trial was fundamentally unfair, which undermined the integrity of the verdict.

CIU bases the recommendation on the following factors:

- The OIC withheld from the defense and the prosecutor, and the jury did not hear, that the investigation of Mr. McIntyre's murder initially revealed nothing tying Mr. Legion to the crime.
- The OIC withheld from the defense and the prosecutor, and the jury did not hear, that Legion was only identified as an assailant in McIntyre's murder after the OIC repeatedly spoke to a drug dealer informant connected to Mr. McIntyre.
- The OIC withheld from the defense and the prosecutor, and the jury did not hear, that the OIC had multiple interactions with the drug dealer. The OIC did not make a report about those interactions or the interview where the drug dealer identified Mr. Legion. The only official statement in the file was that the drug dealer denied knowing anything about the murder.
- The OIC withheld from the defense and the prosecutor, and the jury did not hear, that the eyewitness was not the first person to make identifications of the assailants in this case, it was the drug dealer.
- The OIC withheld from the prosecutor and the defense, and the jury did not hear, that even though the eyewitness knew Mr. Legion prior to the murder and claimed to have seen the assailants the night of the murder, he never implicated Legion until 3 weeks later, when the OIC re-approached him with the information he gathered from the drug dealer.
- The OIC withheld from the prosecutor and the defense, and the jury did not hear, that McIntyre was involved and active with a drug organization at the time of his death and that the Third Street house was owned by the head of the drug organization.
- The OIC withheld from the prosecution and the defense, that the Third Street house was a "spot" that Mr. McIntyre was "holding down" and selling drugs from and that Mr. McIntyre's cousin was suspected of providing "security" for the organization.
- The jury did not hear that the third suspect never introduced Mr. Cotton to the jail house witness and Mr. Cotton did not confess, implicating Mr. Legion, to the jail house witness about their involvement in Mr. McIntyre's murder.
- The jury did not hear that the eyewitness identified three people involved in McIntyre's murder – Mr. Legion, Cotton, and the third defendant, and testified that there was "no doubt" in his mind about his identification of the third defendant.

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- The jury did not hear that the third defendant provided an alibi that was verified by DPD.
- The jury did not hear that the case against the third defendant was going to be dismissed due to his misidentification made by the eyewitness.

Material evidence was not given to the prosecutor by the OIC.

Evidence in the case was withheld from the defense by the OIC of the case, creating a *Brady* violation. This is of importance because outside of the questionable identification by the eyewitness, there was no other eyewitness testimony or physical evidence tying Mr. Legion to the crime. Essentially, the consequence of the *Brady* violation was the presentation of a false narrative to the jury that was unchallenged.

After an exhaustive investigation, the CIU has determined that Legion should be afforded relief. The new evidence undermines the integrity of the convictions due to the denial of crucial discovery to the defense that amounted to a *Brady* violation and the prosecution's presentation of testimony and argument that turned out to be false due to the failure of DPD to provide all relevant case information. CIU recommends granting a new trial. Because the case is unable to be re-tried the CIU moved to dismiss the case and on October 1, 2020 Judge Bridget Hathaway entered an order of dismissal.

CIU Investigation and Recommendations for Mr. Cotton

This case is not an exoneration. It is based upon newly discovered evidence, and the CIU recommends that Cotton's conviction be vacated on the ground that his trial was fundamentally unfair, which undermines the integrity of the verdict. CIU bases the recommendation on the following factors:

- The OIC withheld from the prosecutor and the defense, and the jury did not hear, that the investigation of McIntyre's murder initially revealed nothing tying Cotton to the crime.
- The OIC withheld from the prosecutor and the defense, and the jury did not hear, that Cotton was only identified as an assailant in McIntyre's murder after the OIC repeatedly spoke to a drug dealer connected to McIntyre.
- The OIC withheld from the prosecutor and the defense, and the jury did not hear, that the OIC had multiple interactions "off the record" with a drug dealer and intentionally did not make a report about those interactions and the interview where the drug dealer identified Cotton.
- The OIC withheld from the prosecutor and the defense, and the jury did not hear, that the eyewitness was not the first person to make identifications of the assailants in this case, it was the drug dealer.

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- The OIC withheld from the prosecutor and the defense, and the jury did not hear, that even though the eyewitness knew Cotton prior to the murder and claimed to have seen the assailants the night of the murder he never implicated Cotton until 3 weeks later, when the OIC re-approached him with the information he gathered from the drug dealer.
- The OIC withheld from the prosecutor and the defense, and the jury did not hear, that Mr. McIntyre was involved and active in a drug organization at the time of his death and that the Third Street house was owned by the head of the organization.
- The OIC withheld from the prosecutor and the defense, and the jury did not hear, that the Third Street house was a “spot” that Mr. McIntyre was “holding down” and selling drugs from and his cousin was suspected of providing “security” for the organization.
- The jury did not hear that the third defendant never introduced Cotton to the jail house witness and Cotton did not confess, implicating Legion, to the jail house witness about their involvement in McIntyre’s murder.
- The jury did not hear that the eyewitness identified three people involved in McIntyre’s murder – Cotton, Legion, and the third defendant and testified that there was “no doubt” in his mind about his identification of the third defendant.
- The jury did not hear that the third suspect provided an alibi that was verified by DPD.
- The jury did not hear that the case against the third suspect was going to be dismissed due to the misidentification made by the eyewitness.

Material evidence was not given to the prosecutor by the OIC. The OIC withheld evidence from the defense, creating a *Brady* violation. This is of importance because outside of the questionable identification by the eyewitness, there was no other eyewitness testimony or physical evidence tying Mr. Cotton to the crime. Essentially, the consequence of the *Brady* violation was the presentation of a false narrative to the jury that was unchallenged.

After an exhaustive investigation and based upon the newly discovered evidence in the case, the CIU has determined that Mr. Cotton should be afforded relief. The new evidence undermines the integrity of the convictions due to the denial of crucial discovery to the defense that amounted to a *Brady* violation and the prosecution’s presentation of testimony and argument that turned out to be false due to the failure of DPD to provide all relevant case information. CIU recommends granting a new trial. Because the case is unable to be re-tried the CIU moved to dismiss the case and today Judge Bridget Hathaway entered an order of dismissal.

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Mr. Cotton is expected to be released from the Michigan Department of Corrections later this afternoon. Mr. Legion pleaded no contest before Wayne County Judge Daniel Ryan and was sentenced in November 2001 on a Second Degree Murder case. He is currently serving an eight-year and six months to 20 year sentence in the MDOC Lakeland Correctional Facility. He is expected to complete his maximum sentence on this case in February 2021, if he is not released on parole.

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