

## People v. Swain

878 N.W.2d 476 (Mich. 2016) · 499 Mich. 920  
Decided May 18, 2016

Docket No. 150994. COA No. 314564.

05-18-2016

PEOPLE of the State of Michigan, Plaintiff–Appellee, v. Lorinda Irene SWAIN, Defendant–Appellant.

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### Order

On order of the Court, leave to appeal having been granted and the briefs and oral arguments of the parties having been considered by the Court, we REVERSE the February 5, 2015 judgment of the Court of Appeals and we REMAND this case to the Calhoun Circuit Court for proceedings consistent with its judgment ordering a new trial. The Court of Appeals erred in applying *People v. Cress*, 468 Mich. 678, 664 N.W.2d 174 (2003), to an analysis of a successive motion filed pursuant

to MCR 6.502(G)(2). *Cress* does not apply to the procedural threshold of MCR 6.502(G)(2), as the plain text of the court rule does not require that a defendant satisfy all elements of the test. The Court of Appeals erred in failing to give proper deference to the specific findings of the trial court that the defendant was entitled to a new trial. The defendant provided "a claim of new evidence that was not discovered before the first" motion for relief from judgment, MCR 6.502(G)(2), and we conclude that the trial court did not abuse its discretion in ordering a new trial on the facts of this case. In light of this disposition, we decline to address the other issues presented in our order granting leave to appeal.

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<sup>477</sup> We do not retain jurisdiction.\*<sup>477</sup> McCORMACK, J., not participating because of her prior involvement in this case as counsel for a party.