

their vehicle into the northbound lane of Conner (140). At that point, there was an accident (140). His air bag was deployed and he was injured as a result of this collision (140).

Two or three seconds after the accident, he exited their police vehicle and started running eastbound on Whithom (141). He ran in this direction because he saw Officer Hull running in this direction, figuring that Officer Hull was running for some reason (141). Altogether, he heard about 20 shots that night (141). Neither he nor any other police officer discharged their weapons that night (141).

On cross-examination, Officer Stallard testified that he first heard five to ten shots fired right in front of them, but he did not see anything (144). When that second volley of shots was fired, he saw an individual standing in the street firing a gun (144). The shooter was about 75 feet south of where he and the other officers were in their vehicle (144). When he saw the guy shooting in the street, his attention was focused on the guy (144). He was not paying attention to the cars that were around (145).

When he followed Officer Hull east on Whithom, he did not see the shooter at all (146-147). He reiterated that he ran in the direction he did because Officer Hull was running in that direction (147). He followed Officer Hull for a distance of four or five houses (147).

On redirect examination, Officer Stallard testified that the description of the shooter that he put down in his report was: black male, 20 to 25 years old, 6' to 6'3", 180 to 200 lbs., medium complexion, wearing a multi-colored baseball hat and a white or light colored shirt (148).

Wayne County Chief Medical Examiner Carl J. Schmidt

Wayne County Chief Medical Examiner Carl J. Schmidt testified that he performed the autopsy in this case (Jury Trial Transcript, Vol III, 158). He documented seven (7) gunshot wounds

on the body of the deceased (159). Five of these wounds were to the front of the body (160-162). One of the frontal wounds was a graze wound to the front of the chest (160). There was another wound to the front of the chest where the bullet exited on the right side of the chest (160-161). Another wound was on the top of the left shoulder with no corresponding exit wound (161). Another wound was to the left arm, with the bullet having gone through the left arm and reentered at the left chest, where it remained lodged (161). Another wound was to the inner aspect of the right arm, with an exit wound on the back of the right arm (161). The direction of the bullets that caused the wounds was from left to right and downward (162).

There were two gunshot wounds on the back of the body (162). One of these wounds was on the back of the head (162). The bullet that caused this wound was recovered from the right side of the neck (162). The other wound to the back of the deceased's body was in the midback (162). The bullet that caused this wound was recovered on the wall of the right chest (162).

He found the cause of death to be multiple gunshot wounds and the manner of death to be homicide (163-164).

On cross-examination, Dr. Schmidt testified that he recovered four bullets or bullet fragments from the body of the deceased (165). These were turned over to a homicide detective, Detective David Moore (166).

Detroit Police Officer Robert Bulgarelli

Detroit Police Officer Robert Bulgarelli testified that in November of 2004, he was a member of a **task force** that conducted arrests of suspects in homicide cases (Jury Trial Transcript, Vol III, 168). **He was involved in the arrest of Defendant on November 30, 2004** (167-168). He and 12 other officers and agents went to an address in Clinton Township, 34326 Ardmore, to effectuate the

arrest (168). There were other Detroit police officers, Michigan State troopers, Clinton Township police officers, and FBI agents (170).

34326 Ardmore was the address of an apartment building (168). They went to apartment 325, where he knocked on the door (169). After he knocked on the door, he heard running and the sound of something being banged up against the door (169). They forced entry into the apartment (169). What they found was a chair propped up against the door (169). Two women were in the apartment (169). He did not see Defendant (170). He told the two women that they had a warrant for Defendant's arrest (170). He then began searching the apartment (170). They found Defendant in a bedroom closet hiding behind and above a furnace (170). There was a crawl space above the furnace and Defendant had tried to conceal himself behind a piece of dry wall (171). Defendant would not come out of the crawl space, so he had to be forcibly removed (171). Pepper spray was used to get him out of the closet (178). After he was removed from the closet, Defendant was handcuffed (178).

As Defendant was being walked out of the apartment, he made some comments which were not in response to any police questioning (172). What Defendant said was, "You might as well inject me. I ain't going to stop" (179).

In the bedroom where Defendant was hiding, there was a handgun on the dresser (179). He confiscated this handgun and placed it on evidence tag E8040804 (179-180). The handgun that he confiscated and placed on evidence was a Hecker and Couch USP Compact .45 caliber semi-automatic (180). The handgun was loaded with seven (7) live rounds when he confiscated it (181). He identified People's Exhibit No. 17 as the handgun that he confiscated (180).

On cross-examination, Officer Bulgarelli testified that the older of the two females that they encountered when they forcibly entered the apartment was about 60 years old (186). He denied that Defendant was lying on the bed when they entered the bedroom (186).

When asked what force was used to extricate Defendant from the closet, Officer Bulgarelli responded that after Defendant was ordered out and said that was not coming out, he was pepper-sprayed and then grabbed by legs and pulled out (190).

Detroit Police Officer Scott Herzog

Detroit Police Officer Scott Herzog testified that in September of 2004, he was assigned to Special Operations (Jury Trial Transcript, Vol IV, 12). On September 5, 2004, he was working with Officers Michael Hull and Shawn Stallard (12). They were in plainclothes, in a semi-marked police vehicle (12).

At around 9:00 p.m. on September 5, he and his two partners were in the area of Conner and Whithorn (13). There was a large party going on at that time at City Airport (13). They had not been called to the area; they were just giving it special attention because there were 1000 to 2000 people there (13). He was seated in the rear seat of the police vehicle (13). They were headed south on Connor 13). As they approached the intersection of Whithorn, he heard gunshots (13). He then observed a black male running (13). He could not say whether Defendant was this man (15). Their vehicle then got struck by another vehicle (13). He was injured as a result (13). He got out of their vehicle after the accident, but he did not chase anybody (14). He never fired his own weapon, nor did he ever see any of the other police officers fire their weapons (14).

On cross-examination, Officer Herzog testified that the shots he heard came from the front of their vehicle (19-20). He did not see who was shooting (21-22). Nor did he see a Corvette (21-

22). The vehicle that their police vehicle collided with was a burgundy Marauder, which was traveling northbound on Conner (23). He acknowledged that their vehicle had crossed over the middle of Conner, into a northbound lane (24).

When he said that he saw a black male running, he did not mean that this black male had been the shooter (23). **He reiterated that he never saw the shooter (23).** It was before their vehicle collided with the burgundy Marauder that he saw the black male running (25). The black male was running eastbound, crossing Conner, towards a party store on Conner (26-27).

Detroit Police Officer Kevin Reed

Detroit Police Officer Kevin Reed testified that he was assigned to the Firearms Identification Unit (Jury Trial Transcript, Vol IV, 31). **After being qualified in this field,** Officer Reed testified that he was given for examination a .45 caliber Hecker and Couch Model USP on Detroit Police evidence tag E8040804 (41). He identified People's Exhibit No. 17 as this firearm (41). He test-fired this weapon in order to obtain a casing with which he could compare to other spent casings (42). **He had already examined the seven .45 caliber casings recovered by Officer Velma Tutt at the scene and had determined that all of the spent casings had been fired from the same weapon** (42-43). This comparison had been done in January of 2005 (43).

Upon receiving the .45 caliber handgun, he went to the Property Room and pulled two of the seven spent casings that he had examined in January (43). The two casings that he pulled were on evidence tags E07171904 and E07172004 (43-44).¹ He identified People's Exhibits 26 and 27 as

¹ It will be recalled that Officer Velma Tutt testified that she found a number of pieces of firearms evidence in the street (Vol II, 24-25). One of them was a Federal brand .45 caliber fired shell casing, which she placed on evidence tag 07171904, and another was a CBS brand .45 caliber fired shell casing, which she placed on evidence tag 07172004 (27-30).

these casings (44). He found, by way of comparison microscope, that these two casings had been fired by the .45 caliber handgun on People's Exhibit 17 (44). He did this by comparing the two fired casings on People's Exhibits 26 and 27 to the casing that he obtained from firing the handgun (44-45).

Defense

Edward Desawn Johnson

Edward Desawn Johnson testified that at around 9:00 p.m. on September 5, 2004, he was at a cookout at Balfour and Grayton (Jury Trial Transcript, Vol IV, 67). He saw Defendant there (67). Defendant was there when he arrived and Defendant was there when he left, which was about 9:45 p.m. (67-68).

On cross-examination, the witness acknowledged that he had been previously convicted in 1999 of possessing stolen property over the value \$50,000 and carjacking (68). The house on Balfour, where the cookout was, belonged to his cousin Corrinia Searcy (69). Corrinia was related to Defendant, and he (the witness) was related to Defendant as well (69). Defendant was his cousin (69).

The witness testified that there were a few people at the cookout, more than 20 (69). He arrived at 9:00 and left at 9:45 (70). While he was there, he sat and ate, and then left (70) He went home from there, which was an hour away (71). He only recalled the names of two people who were at the cookout, his cousins Siera and Mark (73). He only talked to these two people at the cookout (73).

Jontate Edgeron

Jontate Edgeron testified that he was at the barbecue party on Balfour on September 5, 2004 (Jury Trial Transcript, Vol IV, 80). He did not know exactly how many people were there, but he knew that the people were all family and friends (80). He arrived there around 3:30 or 4:00 p.m. and stayed until midnight (81). He saw Defendant there around 9:00 p.m. (82). In fact, Defendant was there when he got there and Defendant was still there when he left (82).

The witness acknowledged that a detective had interviewed him before his testimony, and he told the detective where he had been on September 5 (80). He refused to sign any statement (80).

On cross-examination, the witness was asked why he would not sign the statement that he had given to the police officer prior to his testifying (83). He responded that he did not sign it because he could not read the officer's handwriting (84). He acknowledged that the statement was not handwritten, but printed (84).

Mark Davis

Mark Davis testified that he worked for the Detroit Public School System (Jury Trial Transcript, Vol IV, 102). He testified that on September 5, 2004, he went to church (103). After that, he came home, changed his clothes, and went over to Defendant's house on Balfour (103). There was a barbecue going on there (104). He got there around 3:30 (104). Defendant was there when he got there (104). Defendant was also there at 9:00 p.m. (105). He (the witness) left the barbecue at 11:00 or 12:00 (105).

On cross-examination, the witness testified that he left the barbecue between 11:00 and 12:00 (108). He drove Defendant home (108). Defendant was wearing a red shirt and black shorts that night (111).

On cross, the witness testified that he was a custodian for the Detroit Public Schools (113). He acknowledged that he gave a statement to a police officer prior to his testifying and that he would not sign the statement until Defendant's attorney had read it (112).

He testified that he first learned that Defendant was accused of the September 5th murder on December 25, 2004 (112). He did not go the police and tell them at that time that Defendant could not have committed the murder because he figured that since everybody else knew that Defendant did not commit the murder, the police should have known that as well (113). Besides that, he did not like talking to the police (113).

Siera Adams

Siera Adams testified that she was at a barbecue on September 5, 2004 (Jury Trial Transcript, Vol IV, 117). She testified that she arrived there at around 7:30 p.m. (117). Defendant was there when she arrived 117). She left at around 11:00 (118). Defendant was still there when she left (118).

On cross-examination, the witness testified that it was Defendant's mother who invited her to the barbecue (118). She knew that the date that she was at the barbecue was September 5 because that was the day before Labor Day, and Defendant's mother always had a barbecue on the day before Labor Day (119). She had talked to Defendant's family about her being at the barbecue on September 5 (120). Defendant's mother asked her two and half weeks prior to her testifying if she could be a witness (121). It was then that she found out that Defendant had been charged with murder (121). She did not go the police with her information that Defendant could not have committed the murder because he was at the barbecue (121).

While at the barbecue, Defendant never left her sight for a long period of time (122). She never saw Defendant leave (124). She knew that other people left and returned to the barbecue, but she could not say who these people were (125-126). But she knew that Defendant was not one of these people, although he may have briefly left to go to the bathroom (126).

Jo Ann Miller

Jo Ann Miller testified that on September 5, 2004, she was at a barbecue on Balfour (Jury Trial Transcript, Vol IV, 131). The barbecue was at Corrinia's house (131). She got to the barbecue at around 6:00 p.m. (132). When she got there, Defendant was there (132). She left the barbecue at around 10:00 (132). There were from 12 to 15 people at the barbecue (132).

On cross-examination, the witness testified that Defendant's grandmother was there, as were Defendant's friends and children (133). She knew that Defendant never left because they were all in the backyard (133).

The witness testified that she only found out that morning that she would be testifying (135). She learned that she would be testifying just that morning from Mr. Mitchell (135). She had not talked to Mr. Mitchell before that (135). She just showed up for the trial that morning (135).

On April 1, Defendant's mother came to her house and told her that Defendant was being charged with murder (137). It was on that date, April 1, that she wrote out a letter about the time that she had been at the barbecue and when she left (137).

Josan Gaskin

Josan Gaskin testified that she was employed at Blue Cross and Blue Shield of Michigan (Jury Trial Transcript, Vol IV, 145). She testified that she was aware that she was there to testify

about a barbecue that had occurred on September 15 (145-146). She then clarified that the barbecue took place on the Sunday before Labor Day (146).

She first went to church that day and then she went to Defendant's mother's house for a barbecue (146). She arrived at the barbecue at 3:00 or 3:30 p.m. (146). She went with Mark Davis (146). When she arrived at the barbecue, Defendant was there (146). She stayed at the barbecue until about 11:00 p.m. (147). She continually saw Defendant at the barbecue (147). She never saw him leave there (147). Defendant was wearing a red T-shirt and black shorts (147). Defendant's baby girls were dressed like him (147).

When she left the barbecue at around 11:00, she left with Mark, Defendant, and Defendant's two children (148).

Corrinia Stradford

Corrinia Stradford testified that Defendant was her son (Jury Trial Transcript, Vol IV, 157). She testified that she lived on Balfour (157). She testified that on September 5, 2004, she had a barbecue cookout for family and friends (157). She always had such an event on the Sunday preceding a holiday when the holiday fell on a Monday (157).

Defendant came over to her house on September 5 with his two daughters, LaShira and Page (158). Defendant left the barbecue between 11:30 and 12:00 (158). He left with Mark, Jo Ann, and Defendant's two daughters (158-159). Until Defendant left, she saw him continuously, except for when he used the bathroom (159).

On cross-examination, the witness testified that on November 30, 2004, Defendant was living with his mother-in-law (162). She testified that Tiara was Defendant's wife (162). When asked

who Edna Richardson was, the witness responded that she was her own mother (162). Her mother had an apartment in Clinton Township (162).

The witness was asked how the weapon that was used in this case happened to be in her mother's apartment in Clinton Township (162). She responded that she had seen the gun in her mother's apartment (163). When asked if People's Exhibit No. 17 was the gun that she had seen in her mother's apartment, she responded that People's Exhibit No. 17 was not the gun (163).

The witness was asked if Tiera Searcy, Defendant's wife, lived in the apartment in Clinton Township (163). The witness responded that she did not (163). When asked what Defendant would have been doing in the apartment in Clinton Township on November 30, 2004, the witness responded that he would have been visiting his grandmother (164). When asked if she knew if Defendant normally hid in the closet behind a wall when he would visit his grandmother, the witness responded that she did not know anything about Defendant hiding in a closet (164).

On redirect, the witness testified that the gun in her grandmother's apartment was not her grandmother's gun (167). The gun belonged to Jeffrey Daniels (168).

On recross examination, the witness was shown People's Exhibit No. 17 and asked if she recognized the gun on the exhibit (169). She responded that she did not (169). She did not know that the gun on People's Exhibit No. 17 had been found in her grandmother's apartment (169).

Edna Richardson

Edna Richardson testified that Defendant was her grandson (Jury Trial Transcript, Vol IV, 172). She testified that in November of 2004, she had an apartment in Macomb County (172).

Defendant was at her apartment on November 30, 2004 (173). Defendant had spent the previous night at her apartment with his wife and two daughters (173). In the early morning hours

of November 30, 2004, the police came to her apartment and kicked in the door (173). The police did not have a search warrant (174). At the time the police came into her apartment, after kicking in the door, Defendant was in her bedroom, lying in her bed (174-175). She did not know anything about Defendant being behind a false wall in her bedroom (174). At the time the police came, she was stretched out on the living room floor with Defendant's wife and daughters (174). His daughters were actually sitting in a chair (175).

She was aware that the police found a gun in her apartment (175). The gun was in her bedroom drawer (175). The gun got into her bedroom drawer when Jeffrey Daniels brought her home one day and left it in her apartment (175). She told Daniels to come and get his gun, but before he got a chance to do that, Daniels was killed (175-176). She would not keep a loaded gun on top of a dresser because she had grandchildren who would stay with her sometimes (176-177).

On cross-examination, the witness was shown People's Exhibit No. 17 (177). She testified that the gun on the People's Exhibit looked similar to the one that Daniels brought over, but she did not know if that was actually the gun (177). Daniels brought the gun to her apartment sometime in August of 2004 (177). Daniels ended up getting killed in September (177). She recalled Defendant visiting her in her apartment off and on in August of 2004 (178-179).

When asked who put the chair up against the door when the police came to her apartment in November of 2004, the witness responded that she did (179). She testified that she always put a chair up against the door at night (179). There was only one bedroom in her apartment (179). In the bedroom was a closet and in the closet was a furnace (179). She reiterated that Defendant and his wife slept in her bedroom the night before the police raided the next morning (180). She slept on the couch, even though she was a 62-year-old disabled woman (180).

She was asked if she ever called the police to ask them to come and get the gun when Daniels left it in her apartment (181). She responded that she did not (181). When asked if she was concerned for the safety of her grandchildren with a gun in her apartment, the witness responded that she did not touch guns (181). When asked if Daniels put the gun in her dresser, the witness responded that Daniels left it in her apartment, and it was she who put the gun in the dresser drawer (181). She did this by picking it up with a towel (181).

On redirect examination, the witness testified that she could not say precisely what day it was that Daniels brought her home and left the gun in her apartment (183).

Argument

The People are in agreement with this Court's Order of June 8, 2017, that there be an evidentiary hearing in this case.

A) Defendant Searcy's Claim

Defendant Searcy claims that he is entitled to relief from judgment/new trial based on newly discovered evidence, that is, the **purported testimony of convicted hit-man Vincent Smothers, who, in an Affidavit, claims that he, along with Jeffrey Daniels (now deceased), murdered the victim in this case, Jamal Segars.**

This Court has ordered a response from the prosecution.

H) The People's Response

The People are in agreement with this Court's Order of June 8, 2017, that there be an evidentiary hearing in this case. Counsel should be appointed for Defendant Searcy, pursuant to MCR 6.505(A), as well as for Vincent Smothers, since Smothers will conceivably be implicating himself in a first-degree murder and an assault with intent to murder.²

Since an evidentiary hearing will be held, purportedly with testimony from Vincent Smothers, and **with testimony conceivably from prosecution witnesses,** it would be premature at this juncture for the People to take a definitive position as to Defendant's Searcy's Motion for Relief from Judgment. The People will, however, make these observations:

Four people at trial identified Defendant as the shooter, or one of the shooters. The People are cognizant that in a letter sent to the Detroit Chief of Police, dated April 7, 2017 (a copy of the

² The People note that attorney Gabi Silver was appointed to represent Smothers in his own cases in this Court.

letter is attached as **Appendix A**), Defendant alleges that two of those four identifying witnesses, Latasha Boatwright and Kimberly Jeffries, were paid by DeAnthony Witcher, who the People theorized at trial was the intended victim, "to testify and lie on" him (**Appendix A**, page I). Defendant states in his letter that this is according to what Harvey Witcher, the uncle of DeAnthony Witcher, told an investigator on April 1, 2005, and which he (Harvey Witcher) averred to in an affidavit. The People acknowledge that these two witnesses, Boatwright and Jeffries, were friends of DeAnthony Witcher. This does not explain, however, why two other people, Tiffany King and Dwayne Dye, who had no horse in the race, also identified Defendant as one of the shooters.

When members of a task force that conducted arrests of suspects in homicide cases went to the apartment of Defendant's grandmother in Clinton Township, to effectuate Defendant's arrest, Defendant was found hiding in the bedroom closet. And after Defendant was forcibly extricated from the bedroom closet, a weapon was found on top of the dresser in that bedroom which turned out to be one of weapons used in the murder.

As this Court notes in its Order of June 8, 2017, Vincent Smothers has executed an Affidavit in which he takes credit for the murder of Jamal Segars and the assault with intent to murder of Brian Minner. **And as this Court aptly notes, Smothers lays out in very good detail (apart from the fact that he gets the date wrong) how he and one Jeffrey Daniels (now deceased) killed Segars and wounded Minner. Smothers indicates in his Affidavit that he is doing the honorable thing by coming forward with his admission to exonerate Defendant as he did in a previous case (the previous case being the case of People v Davontae Sanford).**

On its face, Smothers' willingness to admit to the murder and assault with intent to murder in this case appears to be rather compelling. The People would, nevertheless, provide a word about Smothers.

In the case of Davontae Sanford, the People did stipulate to the granting of relief to Sanford from his guilty plea-based convictions of four counts of second-degree murder and other charges. But the People's agreement to grant Sanford relief had nothing to do with Smothers' admissions to the murders in that case. Rather, the People agreed to the granting of relief to Sanford based on the fact that a witness, Detroit Police Commander James Tolbert, had misrepresented how the taking of a key piece of evidence, a sketch of the scene drawn by Sanford that showed that Sanford had to have been at the murder scene in order to give such a detailed sketch of the location of the bodies and the furniture in the house, had occurred. (Tolbert had testified that Sanford drew the whole sketch by himself, which testimony was later contradicted by Tolbert when he was interviewed by the Michigan State Police). And what should be noted is that Smothers was subpoenaed twice by Sanford to testify in court, and twice he invoked his Fifth Amendment right against self-incrimination. When Smothers then indicated a willingness to testify, the trial court, that being Judge Brian R. Sullivan, would not allow this (a decision which the Court of Appeals fully agreed with).³ In addition, in Judge Sullivan's final Order in Sanford, Judge Sullivan noted his skepticism

³ In its Opinion in *People v Davontae Sanford*, Court of Appeals No. 291293, the Court of Appeals observed:

During these proceedings, defendant attempted to call Smothers as a witness three times. The first and second attempts failed because Smothers exercised his Fifth Amendment privilege against self-incrimination. Defendant's third attempt to produce Smothers as a witness was not accompanied by an offer of proof explaining why Smothers was now willing to testify, or how he

of Smothers' purported account (the People have attached Judge Sullivan's final Order in Sanford as **Appendix B**).

In his Affidavit in this case, Smothers avers that his accomplice, Jeffrey Daniels, had a chrome and black HK .45 that he fired at the scene. There is no dispute that the weapon found in the bedroom of Defendant's grandmother at the time of Defendant's arrest was one of the weapons fired at the scene. Defendant's grandmother, Edna Richardson, testified that she came into possession of this weapon when Jeffrey Daniels brought her home one day and left the weapon in her apartment. She testified that this was sometime in August of 2004. And she testified that she called Daniels asking him to come and get his gun, but before he had a chance to do that, he was killed. If as Edna Richardson said, Daniels left this gun in her apartment in August, and never did retrieve it from her, he would not have had the weapon on September 5, 2004.

would testify. Considering that Smothers had twice previously exercised his Fifth Amendment privilege against self-incrimination to avoid testifying and that defendant failed to provide an offer of proof or verification that Smothers was now willing to waive his Fifth Amendment privilege, the trial court did not abuse its discretion in denying defendant's motion to produce Smothers as a witness.

Court of Appeals Opinion, page 4.