**STATE OF MICHIGAN**

**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**PEOPLE OF THE STATE OF MICHIGAN,**

 **PLAINTIFF,**

 **CASE NO.** [**75-007704-01-FC**](https://cmspublic.3rdcc.org/CaseDetail.aspx?CaseID=201975)

**vs.**

 **HON. CHRISTOPHER M. BLOUNT**

**RICKY RIMMER,**

 **DEFENDANT.**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/**

Kym Worthy

Wayne County Prosecutor

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Detroit, MI 48226

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**DEFENDANT’S RESPONSE TO PLAINTIFF’S ANSWER TO MOTION FOR NEW TRIAL/MOTION FOR RELIEF FROM JUDGMENT**

**INTRODUCTION**

Defendant Ricky Rimmer has been incarcerated for 47 years based upon the testimony of two police officers who manufactured the evidence that caused his conviction (officers who were not present when the crime occurred), and one eyewitness who identified Mr. Rimmer at trial, whose identification was manipulated by the officers. The only other evidence submitted at Mr. Rimmer’s trial came from Larry Smith and Darryl McDonel, each of whom has recanted their testimony. Co-defendant Timothy Jordan invoked his Fifth Amendment right to remain silent and did not testify. The prosecutor called Detroit Police Department Sgt. James Harris as a witness, who read Timothy Jordan’s statement which incriminated Mr. Rimmer.

 When eyewitness Harry Wilke testified, he testified that two officers came to his home with photographs of suspects. Mr. Wilke was unable to identify anyone.

 The officer in charge of the case, Sgt. Leo Haidys, testified that “everything” in regard to the case, including interviewing witnesses, taking statements, requesting warrants, and collection of evidence, had to go through him as he was the officer in charge (OIC).

 The point here is that Smith recanted, and the appellate courts found that the trial court erred when it allowed Smith’s preliminary examination testimony to be read at trial. However, the court found that the testimony of Wilke and McDonel was enough to uphold the conviction and ruled that the confrontation violation regarding the jury hearing Smith’s pre-exam testimony was harmless error. McDonel has since recanted his testimony.

 Sgt. James Harris, on October 9, 1975, took Larry Smith out of the Wayne County Jail (Smith was already in the jail on other charges) to DPD headquarters and had him make contact with McDonel, who also came to the police station. Once there, Smith and Harris told him that his help was needed to arrest Jordan and Rimmer. McDonel agreed because Harris and Smith told him that Rimmer and Jordan had killed his best friend Gregory Smith (Frog), who was Larry Smith’s little brother.

 Once McDonel had set Jordan up, McDonel was placed in a separate police car from Jordan. Both were taken to DPD and taken to the fifth floor by Harris. Both were placed in a room where Smith was waiting. Harris then told the three of them (McDonel, Smith, and Jordan) to get their stories together because he wanted Mr. Rimmer. Thus the three concocted statements implicating Mr. Rimmer in the crime.

 Sgt. Haidys, as stated above, testified *inter alia* that he was the OIC and that “anything” that was done in the case had to go through him for approval. However, Sgt. Haidys could not inform the court who the two officers were that took photographs to eyewitness Harry Wilke’s home for viewing,

 The information regarding the photographs was never disclosed to the defense. This information did not reveal itself until the eyewitness took the stand at trial and exposed it.

 Then there was another matter of importance regarding Sgt. Haidys. On Feb. 5, 1976, Sgt. Haidys appeared in court at 9 a.m. (before the proceedings started) with a report that he had written, detailing a telephone call that that he had received from Larry Smith at 8:45 a.m. The report stated:

“Above time and place, Sgt. Leo Haidys received a phone call from a witness in the above court case, a Larry Smith. Mr. Smith told Sgt. Haidys stated that He had a problem and that he could not take the stand, and that Sgt. Haidys knew he had a problem. He further stated that what he had told me and what he testified to at the examination was true but he could not take the stand.

Sgt. Haidys stated that he would relay this information to Mr. Kenny the prosecutor and see if he could arrange a meeting with the judge in regards to his problem.

Sgt. Haidys further stated that per orders of Judge Heading he was ordered to appear in court this morning to take the stand in regards to this trial.” /s/ Leo Haidys Sgt. Badge 5-49, Homi Sqd 7. 2-5-76 8:45 A.

 Sgt. Haidys testified on the stand that Larry Smith told him that he could not testify because he did not want to be labeled “a rat.”

 However, Smith did come to court and testified. If he had made the statement Sgt. Haidys claimed, why did he appear in court?

 He appeared, and also testified. Smith denied that he told Sgt. Haidys that he did not want to testify. Smith further testified that he told Haidys that he did not have transportation to get to court (TT 318-22). After Haidys and Smith testified, the court ordered Sgt. Haidys not to talk to Smith again. When Haidys tried to explain to the court that he did nothing wrong, the court informed Sgt. Haidys that he and Sgt. Harris were under court order not to talk to Mr. Smith again (TT 365-66).

 Smith further testified that he lied at the preliminary examination when he testified that Mr. Rimmer was involved in the crime.

 After Smith testified, the court then asked him if he wanted a lawyer to explain his rights to him. Smith had already testified before he invoked his Fifth Amendment right. Thus, Smith was available, but the court agreed with the prosecution and allowed the jury to hear Smith’s preliminary examination testimony instead.

 In the Plaintiff’s Response, counsel attacked Defendant’s pleadings using very disturbing language because Mr. Rimmer had filed *in pro per.* There’s an old saying attributed to Abraham Lincoln: “It is better to be thought a fool than to open one’s mouth and remove all doubt.”

 Mr. Rimmer would at this point ask the court to caution the Plaintiff against citing or relying on outdated provisions of the court rules, and attempts to mislead the court, for example: on p. 8 of the Plaintiff’s response, it states:

“Notably, this is not the first time a defendant has tried to use MCL 770.1 and MCL 770.2 to skirt the requirement to comply with the standards of a motion for relief from judgment. In the unpublished case of *People v. Swain*, the Court of Appeals held a defendant cannot file a motion for a new trial under MCL 770.1 and MCL 770.2 after his time to file that motion had expired, according to the court rules.”

Footnote 26 states:

“Appendix I. *People v. Swain,* unpublished opinion of the Court of Appeals, issued February 5 (Docket No. 314564), 2015 WL521623. P.6\*6, reversed on different grounds by appeal *People v. Swain,* 499 Mich 920 (2016).” *Plaintiff’s response at 8.*

 It appears that the Plaintiff is attempting to mislead this court—or simply did not properly research the law, because there is a concurring opinion in the February 5, 2015 *Swain* by Judge Cynthia Diane Stephens:

STEPHENS, J. (concurring) I concur in the majority’s result and analysis as to the issues of newly discovered evidence and a Brady violation. I concur in the result only as to the actual innocence claim because while I agree there is no authority for an independent actual innocence standard in Michigan, I believe the proofs in this case are such that under a Swain, 288 Mich App at 638, standard, this case is one in which it is more likely than not that no reasonable juror would have found the defendant guilty. This case is already one with recantations and inconsistencies which, with the testimony of Book, would be one where a guilty *(sic)* verdict would more likely than not be rendered by a reasonable jury. /s/ Cynthia Diane Stephens

 The failure to add Judge Stephens’ concurring opinion is extremely important to this court’s review of Mr. Rimmer’s motion, and why he has asked this Honorable Court to review his motion under MCL 770.1 and MCL 770.2. In her concurring opinion, Judge Stephens states that she was concurring in the result only as to the actual innocence claim because she agrees there is no independent actual innocence standard in Michigan.

 Based on Judge Stephens’ concurring opinion, the Michigan Supreme Court granted leave to appeal on the issue of actual innocence:

“(3) by what standard(s) Michigan courts consider a defendant’s assertion that the evidence demonstrates a significant possibility of actual innocence in the context of a motion brought pursuant to MCR 6.502(G), and whether the defendant in this case qualifies under that standard;

(4) whether the Michigan Court Rules, MCR 6.500 *et seq.* or another provision provide a basis for relief where a defendant demonstrates a significant possibility of actual innocence;

(5) whether, if MCR 6.502(G) does bar relief, there is an independent basis on which a defendant who demonstrates a significant possibility of actual innocence may nonetheless seek relief under the United States or Michigan Constitutions, and

(6) whether the defendant is entitled to a new trial pursuant to MCL 770.1. *People v Swain*, 499 Mich 920 (2016).

 Clearly, the concurring opinion of Judge Stephens caused a dramatic change in MCR 6.502(G)(2). Her concurring opinion also appears to be saying that MCR 6.508(G)(2) was precluding her from granting Swain relief. Thus the Court asked the bench and bar to file *amicus* briefs regarding (6) whether the defense is entitled to a new trial pursuant to MCL 770.1. See *People v Swain,* 499 Mich 920 (2016).

 Mr. Rimmer will now address each of the plaintiff’s positions.