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

VS.

HON. BRUCE U. MORROW

RICKY RIMMER,

DEFENDANT.
_____/

Wayne County Prosecutor Kym Worthy
1441 St Antoine
Detroit, MI 48226
(313) 224-5777

Ricky Rimmer, #133464
Defendant in pro per
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811-974
_____/

MOTION FOR NEW TRIAL

MOTION FOR EVIDENTIARY HEARING

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Defendant Rimmer submits that this court has jurisdiction pursuant to MCL 770.1 and MCR 6.502.

STATEMENT OF QUESTIONS PRESENTED

I. DEFENDANT RIMMER IS ENTITLED TO A NEW TRIAL BASED UPON NEWLY PRESENTED CORROBORATED RECANTING EVIDENCE WHICH CONSTITUTES A COLORABLE CLAIM OF ACTUAL INNOCENCE UNDER SCLUP V. DELO, 513 US 298 (1995)

II. DEFENDANT RIMMER IS ENTITLED TO A NEW TRIAL WHERE THE PROSECUTION SUPPRESSED FAVORABLE IMPEACHMENT EVIDENCE OF (1) SGT. LEO HAIDYS' ARREST AND TRIAL FOR FELONIOUS ASSAULT WITH HIS SERVICE WEAPON, AND THE USE OF RACIST TERMS SUCH AS "NIGGER;" (2) THE SUPPRESSION OF FAVORABLE IMPEACHMENT EVIDENCE OF SGT. JAMES HARRIS' ARREST AND TRIAL FOR ASSAULT WITH INTENT TO MURDER ANOTHER LAW ENFORCEMENT OFFICER; AND (3) HARRIS' SUPPRESSION AT TRIAL OF HIS USE OF PROSECUTION WITNESS DARRELL MCDONEL AS A POLICE AGENT, ALL IN VIOLATION OF MR. RIMMER'S FEDERAL CONSTITUTIONAL RIGHT UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND BRADY V. MARYLAND 373 U.S. 83 (1963), GIGLIO V. UNITED STATES, 405 U.S. 150 (1972).

STATEMENT OF FACTS

On August 7, 1975, Joseph Kratz, the owner of Delta Motor Sales Company, on Van Dyke between Davison and Neff, was shot and killed during a robbery.

At trial, Harry Wilkie testified that on August 7, 1975 at about 4:00 p.m., he was on his way to work in the area of Van Dyke and Davison Streets when he observed a man staggering out into the street, the man was holding his side, the man then fell to the ground. (TT 31-34).

Wilkie testified that he began to get out of his car to help the man, when he observed another man come out onto Van Dyke with a gun in his hand and that the man was black, between 19 and 21 years old. According to Wilkie, this man went over to the wounded man and grabbed for the man's pants and removed something that looked like papers, while holding his gun on him. (34-39). Wilkie further testified that he observed two other individuals in the area, but could not testify as to what they were doing, nor could he identify either of the two, but at trial he testified that Timothy Jordan resembled one of the other two men. (47-49). Mr. Wilkie identified Mr. Rimmer at trial as the first man with the gun.

Mr. Wilkie testified that he attended a corporal line-up on August 21, 1975 (two weeks after the crime) and that he identified number 4, Mr. Rimmer. (TT 49-50). On cross examination, Mr. Wilkie testified that a week after the crime, two detectives came to his home with a stack of photographs, but that he was unable to identify anyone, and that he did not know the defendant's name. When asked about his picking of number 4 at the corporal line-up, Mr. Wilkie testified, "Well I says cannot get any closer, than you have the right man." (TT 76-72). Wilkie denied that he told the police at the corporal

line-up that "number 4 looks like him."

Sgt. Richard Gajeski testified that he conducted the corporal line-up of August 21, 197, where Mr. Wilkie viewed the line-up where Mr. Rimmer was physically present as number 4.

Sgt. Gajeski testified that Wilkie pointed to number 4, and said, "he looks like him." Sgt. Gajeski further testified that he writes down exactly what the witness said during the line-up, and that Mr. Wilkie's identification of Mr. Rimmer was not positive. (TT 160-161).

Sgt. Leo Halides testified that he was the officer in charge of the case and that everything is funneled through him. (TT 452-453). Sgt. Haidys denied that the photographic line-up that took place at Wilkie's home was at his direction, and that he did not know who conducted the photo line-up that took place at Wilkie's home. (TT 452-453). Sgt. Haidys further testified that based upon the weak identification of Mr. Wilkie, he did not feel that it was enough to hold Mr. Rimmer, and therefore he was released. (TT 455, 456). Sgt. Haidys testified that he did not know the date that Mr. Rimmer was re-arrested, but he agreed that it was in October of 1975 after conversations with Darrell McDonel and Larry Smith. (TT 456).

Darrel McDonel testified that he, Larry Smith, Ricky Rimmer, Timothy Jordan and Kenneth Crawford made the decision to rob the car lot (TT 172-174). Smith's brother (Frog) Gregory Smith went to the car lot to buy a car, McDonel testified that he heard a gunshot coming from the front of the car lot and saw Frog standing on the car lot and observed the dealer run off of the curb onto Van Dyke. McDonel said he testified that he heard two or three shots coming from the car lot. He observed Gregory Smith on the lot and observed Ricky Rimmer and Timothy Jordan, he saw Jordan going toward

the corner where they had met up. He saw Rimmer on the sidewalk just beyond the car lot; he was then going across Van Dyke. McDonel testified that he did not see anything in Rimmer's hands. He observed Rimmer go out between 2 - 3 cars and was on his way back to the car when Larry Smith asked Rimmer whether he had gotten the money. (TT 178-195).

Sgt. Leo Haidys testified outside the presence of the jury that Larry Smith called him the morning that he was to testify stating that he could not testify, but that what he (Smith) told him (Haidys) and what he testified to at the preliminary examination was true.

Larry Smith testified outside the presence of the jury. Smith denied that he told Sgt. Haidys that he did not want to testify. Smith testified that he told Sgt. Haidys that he did not have transportation to the court. (TT 348-349). Smith further testified that the police officers in the case had told him that they had evidence that Jordan and Rimmer had killed his brother Frog (Gregory Smith), and that he wanted revenge, and that his preliminary examination testimony and statement were false. (TT 318-322).

Smith recanted his preliminary examination testimony before he invoked his Fifth Amendment right to remain silent.

The court, based on Sgt. Haidys' testimony that Smith told him that he did not want to testify, allowed Smith's preliminary examination testimony to be read to the jury. The court also ordered Sgt. Haidys not to talk to Smith again. When Haidys tried to explain that he did no wrong, the court informed Sgt. Haidys that he and Sgt. Harris were under a court order not to talk to Smith again. (TT 365-366).

Sgt. James Harris testified he took a statement from Timothy Jordan (TT 479-513). Sgt. Harris read Jordan's confession to the jury. (TT 514-515).

The jury deliberated for a little over an hour before finding Rimmer and Jordan guilty as charged. (TT 728).

On March 3, 1976, the court sentenced Mr. Rimmer to life without parole on the murder conviction, and to 30 to 60 years on the armed robbery conviction.

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DEFENDANT'S MOTION FOR NEW TRIAL PURSUANT TO MCL 770.1/ SUCCESSIVE MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO MCR 6.502 (G)(2)

Now comes Defendant Ricky Rimmer, *in pro per,* and pursuant to MCL 770.1 and MCR 6.502(G)(2), moves this Honorable Court to grant his motion and states the following in support thereof:

1. On February 11, 1976, Defendant was convicted by a Recorders Court jury of first-degree felony murder and armed robbery, contrary to MCL 750.316 and MCL 750.529 respectively, the Honorable Henry Heading presiding.

2. On March 3, 1976, the Court sentenced Defendant to life without parole on the murder conviction, 30 to 60 years on the armed robbery conviction.

3. On June 21, 1978, the Michigan Court of Appeals affirmed Defendant's murder conviction and sentence, but vacated the armed robbery conviction and sentence. However, Court of Appeals Judge R. M. Maher dissented and would have granted relief to Mr. Rimmer on two grounds: 1) That when the trial court instructed the jury that it had determined as a matter of law that co-defendant Timothy Jordan's confession was voluntarily given, and 2) that the trial court erred in instructing the jury that it should be convinced beyond a reasonable doubt one way or another about the guilt or innocence of the Defendant. (Dissenting opinion R. M. Maher, J. 1-3. People v. Ricky Rimmer, COA Docket #29752, June 21, 1978.)

4. On June 29, 1982, the Michigan Supreme Court granted leave to appeal and remanded the case to the Recorders Court for the City of Detroit for a new trial based on the finding that the trial court erred when it instructed the jury that the co-defendant's confession was voluntarily given. (SC Docket #61669 People v. Timothy Glenn Jordan and People v. Ricky Rimmer.) This is the very same issue that Court of Appeals Judge R. M. Maher would have granted relief on in his dissenting opinion. (Dissenting opinion, R.M. Maher, J. 1-3. People v. Ricky Rimmer, COA Docket #29752m June 21, 1978.)

5. On remand back to the Recorders Court for the City of Detroit, the Wayne County Prosecutor argued that the Michigan Supreme Court opinion only applied to co-defendant Jordan. The trial court disagreed and ordered a new trial for Jordan and Rimmer. The prosecutor appealed the trial court's decision and the Michigan Court of

Appeals reversed the trial court's grant of a new trial to Rimmer, and the Michigan Supreme Court denied leave to appeal. The dates of these decisions are also unknown.

6. On December 29, 1986, Mr. Rimmer filed a third petition for a writ of *habeas corpus* (Docket No. 86-CV-40574-FL); (it appears that his first two petitions were dismissed for failure to exhaust).

7. On April 14, 1988, the Honorable Stewart Newblatt, Judge of the U.S. District Court for the Eastern District of Michigan, granted Mr. Rimmer's petition for writ of *habeas corpus*, finding that the state court erred in allowing the preliminary examination testimony of Larry Smith to be read to the jury. (Rimmer v. Foltz Docket No. 86-CV-40574-FL, Honorable Stewart A. Newblatt April 14, 1988.)

8. The state filed a motion to alter or amend the court's judgment. On July 21, 1988, the District Court granted the state's motion to alter or amend judgment in the prior grant of *habeas corpus* relief, and vacated the prior grant of *habeas corpus* relief.

9. On August 3, 1990, the Sixth Circuit Court of Appeals affirmed the District Court's opinion of July 21, 1988 (see *Rimmer v. Foltz,* COA No. 88-1929, August 3, 1990).

10. Mr. Rimmer concedes that he caused motions for relief from judgment to be filed in the trial court on three separate occasions, March 21, 1996, February 24, 1999, and July 30, 2013, pursuant to MCR 6.500; and 6.502 (G)(2) as listed in the Register of Actions. (See Exhibit #1).

11. Defendant was represented at trial by Attorney Warfield Moore. This is the only attorney that Defendant recalls.

12. Mr. Rimmer has had a tortuous history of appeals regarding his conviction over the last 46 years. Records have been lost and destroyed; thus a lot of the pleadings

filed, court opinions, and attorneys who represented Mr. Rimmer are not known. For example, the Third Judicial Circuit Court's Register of Actions in this case lists only the above-mentioned motions for relief from judgment filed on March 21, 1996, February 24, 1999, and July 30, 2013. The Register of Actions failed to list anything else regarding this case, any other past pleadings or opinions. Mr. Rimmer therefore respectfully requests that this Honorable Court not hold him to the standard of an attorney. See *Haines v. Kerner, 404 U.S. 519 (1972).*

13. Defendant brings this pleading on a Motion for a New Trial pursuant to MCL 770.1. A defendant alleging a wrongful conviction in the State of Michigan, but whose conviction was upheld on appeal, must resort to MCL 770.1 and MCR 6.500. MCL 770.1 allows as a matter of criminal procedure for the trial court to grant a new trial.

> "The judge of a court in which the trial of an offense is held may grant a new trial to the defendant, for any cause which by law a new trial may be granted, or when it appears to the court that justice has not been done, and on the terms or conditions as the court directs." MCL 770.1.

The Legislature's intent is clear. MCL 770.1 was created to empower trial courts with a procedure to prevent miscarriages of justice. The statute allows the trial court to grant relief "when it appears to the court that justice has not been done."

Contrary to MCR 6.500, MCL 770.1 stands as a substantive ground for relief independent of any provided by the Michigan Court Rules. As stated, the State of Michigan enacted MCL 770.1 to correct wrongful convictions within the State of Michigan by providing for substantive relief from the trial court when it appears to the court that "justice has <u>not</u> been done." In other words, the law makers have given the trial court the exclusive authority to correct a miscarriage of justice in a criminal conviction at any time when good cause is shown. *See* MCL 770.2(4).

When statutes are passed into law, they may not be overridden by court rules. McDougall v Schanz, 461 Mich 15, 27 (1999).

14. Defendant submits that MCR 6.500, more specifically, MCR 6.502(G)(2), is a more restrictive doctrine, for example, MCR 6.500 does not allow the trial court to grant relief "when it appears to the court that justice has not been done." Therefore, MCR 6.500 conflicts with MCL 770.1, and thus, the court rule must yield to the statute.

15. Defendant also brings this motion under MCL 770.1 because Michigan lacks an "actual innocence" standard. On September 30, 2015, the Michigan Supreme Court granted leave in *People v. Swain, 498 Mich 890 (2015)* on six (6) claims, four (4) of which are germane to Defendant's case: (a) *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)(2),* and whether the defendant in this case qualifies under that standard; (b) whether the Michigan Court Rules, MCR 6.500, et seq. *or another provision provides a basis for relief* where a defendant demonstrates a significant possibility of actual innocence; (c) 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 (d) *whether the defendant is entitled to a new trial pursuant to MCL 770.1,* Swain, supra, at 890.

16. On May 18, 2016, the Michigan Supreme Court issued a ruling in *Swain,* and granted relief on the first claim only, and stated: "*In light of this disposition, we decline to address the other issues presented in our order granting leave to appeal."* People v. Swain, 499 Mich 920 (2016).

17. Therefore, the Michigan Supreme Court has declined to determine whether Michigan (1) *has an actual innocence standard;* (2) *whether* MCR 6.500, et. seq. or *another provision, provide an avenue of relief for defendants who demonstrate a significant possibility of actual innocence;* (3) *whether if the Court Rule does bar relief, is there an independent basis where a defendant who makes a colorable showing of actual innocence can seek relief under Michigan's Constitution; and* (4) *whether a defendant can seek a new trial under MCL 770.1.*

18. Defendant Rimmer agrees with the Michigan Court of Appeals decision in People v Swain, 2015 Mich. App. Lexis 200 (2015), where the court held that Michigan does not have a standard for a claim of actual innocence. Further, Judge Cynthia Diane Stephens in her concurring opinion in Swain, stated it more plainly: *"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." (Concurring opinion of Judge Stephens.)

19. Since the Michigan Supreme Court has shown such a strong interest in the issues it left undecided in Swain, *supra,* the Court will have to revisit these issues in the near future. Defendant Rimmer submits that in light of the Michigan Supreme Court's granting leave and Judge Stephens' concurring opinion in the Court of Appeals, this court should review his claims under MCL 770.1. This is so, because as stated above, it appears that Michigan lacks an actual innocence standard. As was so aptly stated in Souter v Jones, 395 F.3d 577 (6th Cir. 2005), ***"The State (Michigan) confuses the standard set forth under Mich Ct. R. 6.508(D) for a new trial with the***

standard for actual innocence claims set forth by the Supreme Court in Schlup." Souter, at 595 n.9.

20. If Defendant Rimmer is forced to proceed under the Court Rule (MCR 6.502(G)(2)), then under Michigan's current law Defendant's actual innocence claim must march under the banner of Cress, (People v. Cress, 468 Mich 678 (2003)) once his claim passes the hurdles of MCR 6.502(G)(2). This is true because, again, Michigan lacks an actual innocence standard. The Cress standard is designed for newly discovered evidence and not actual innocence claims, for example, under Cress a defendant must satisfy a four prong test: 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.

21. By Defendant being allowed to have his claims heard under MCL 770.1 he would be able to raise his federal constitutional claim of actual innocence because justice has not been done. Defendants alleging wrongful conviction in the State of Michigan, but who fail to secure release on appeal, must resort to MCL 770.1 and MCR 6.500. MCL 770.1 allows, as a matter of criminal procedure, the trial court to grant a new trial to the defendant, for any cause for which by law a new trial may be granted, or when *it appears to the court that justice has not been done, and on the terms or conditions as the court directs."* MCL 770.1 reflects a legislative policy determination by the State of Michigan because it allows the trial court to grant relief "when it appears to the court that justice has not been done." This language establishes that the legislature *intended* MCL 770.1 to empower trial courts to *prevent miscarriages of justice.* However, MCR 6.500 contains no standard for actual innocence claims and the

Michigan Supreme Court has not made a determination regarding this matter. Until it does, a Michigan defendant's federal constitutional rights are being denied.

22. However, it appears that the Michigan Supreme Court has amended MCR. 6.502(G)(2). This rule once read in part:

> "A defendant may file a second or subsequent motion based on a retroactive change in law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion. The clerk shall refer a successive motion to the judge to whom the case is assigned for a determination whether the motion is within one of the exceptions. . ."

The Court saw fit to amend 6.502(G)(2) to add the following language:

> "The court may waive the provisions of this rule if it concludes that there is a significant possibility that the defendant is innocent of the crime. For motions filed under both (G)(1) and (G)(2), the court shall enter an appropriate order disposing of the motion." MCR 6.502(G)(2) as amended September 20, 2018.

Clearly, the Court has recognized that actual innocence and newly discovered evidence are not the same. This alarm was sounded in *Souter* 16 years ago.

> "In the alternative, the State argues that the photos cannot be used to establish actual innocence because they are not new evidence. Resp. Br. at 17. In dismissing Souter's motion for a new trial, the state trial court, without citing any place in the record for support, found the parties knew of the photographs' existence at trial in 1992 and found their unavailability could have been resolved during the defendant's prior appeals. J.A. at 133-34 (Michigan Cir. Ct. Order Denying New Trial). Assuming *arguendo* that the state trial court's finding is correct, the State's argument is unpersuasive. The State confuses the standard set forth under Mich. Ct. R. 6.508(D) for a new trial with the standard for actual innocence claims set forth by the Supreme Court in *Schlup*. Under Michigan law, to prevail on a motion for a new trial, a petitioner must show "the substance of the evidence, and not merely its materiality, must have been discovered ***after the trial***." *People v. LaPresto,* 9 Mich.App. 318, 156 N.W. 2d 586, 590 (1968) (emphasis added). By contrast, to support a claim for actual innocence, a petitioner must support his arguments "with new reliable evidence . . . that was ***not presented at trial***." *Schlup,* 513 U.S. at 324, 115 S.Ct. 851 (emphasis added). The Supreme Court noted that "[b]ecause such evidence is obviously unavailable in the vast majority of cases, claims of actual innocence are rarely accessible." *Souter at 595 N.9.*

In short, in light of the fact that Michigan does not have an actual innocence standard, this Court should rely on the standard set forth in *Schlup v. Delo,* 513 U.S. 298 (1995) and not the *Cress* "newly-discovered evidence" standard. Newly discovered evidence does not constitute a cognizable federal constitutional claim. *Herrera v. Collins,* 506 390, 400 (1993).

23. In the alternative, if the Court decides not to entertain Defendant's motion pursuant to MCL 770.1, then Defendant reluctantly requests that the motion be considered under MCR 6.502(G)(2).

24.

I. DEFENDANT RIMMER IS ENTITLED TO A NEW TRIAL BASED UPON NEWLY PRESENTED COLLABORATED RECANTING EVIDENCE WHICH CONSTITUTES A COLORABLE CLAIM OF ACTUAL INNOCENCE UNDER SCHLUP V. DELO, 513 us 298 (1995).

In the present case, the recanting affidavits of two witnesses, Darrell McDonel and Timothy Jordan, show that Mr. Rimmer's trial was based upon evidence manufactured by two Detroit police officers. Mr. Rimmer submits that there is a difference between false evidence and manufactured evidence. False evidence can spring from a number of sources, lay witnesses, expert witnesses etc. . . .On the other hand, manufactured evidence is evidence that is created to mislead a court or jury. Mr. Darrell McDonel executed an affidavit on August 15, 2021 stating that his trial testimony against Mr. Rimmer stemmed from a plot hatched on October 9, 1975 between himself, Larry Smith and Detroit Police Officer Sgt. James Harris to manufacture evidence and submit the same manufactured evidence to the court.

Timothy Jordan has also executed an affidavit stating that he conspired with Larry Smith, Darrell McDonel and Detroit Police Officer Sgt. James Harris on October

9, 1975 to manufacture a false confession to implicate Ricky Rimmer in the murder of Joseph Kratz.

Both Jordan's and McDonel's affidavits are corroborated not only by the circumstances which gave rise to the initial false statements, but also by court testimony by Sgt. Harris himself and the evidence at Mr. Jordan's Walker hearing (People v. Walker, 374 Mich 331 (1965).

At the Walker hearing, Mr. McDonel testified that he was summoned to police headquarters by Larry Smith and Sgt. James Harris. At the Walker hearing, no one asked Mr. McDonel why he was summoned to police headquarters by Sgt. Harris and Larry Smith. What McDonel's affidavit reveals is what that October 9, 1975 meeting was about. In his affidavit, McDonel states that once he was at the police station, Larry Smith and Sgt. Harris informed him that Ricky Rimmer and Timothy Jordan had killed his best friend and Smith's little brother Gregory Smith.

McDonel further states that Sgt. Harris told him that he wanted him to help arrest Jordan and Rimmer, that Sgt. Harris had him call Jordan and tell Jordan that he had a robbery planned and ask Jordan if he wanted in on it. That once Jordan came out of the home he was chased by Sgt. Harris and other officers. That he was transported to the police station and placed in a room with Jordan and Smith, and told by Sgt. Harris to get their stories together on Rimmer and that he wanted them to say that Rimmer was present and did the shooting. That he, Smith and Jordan had conversations and agreed to say that Rimmer killed the car salesman. Jordan's affidavit states that he received a telephone call from Darrell McDonel and told him that he did want in on the robbery, and that when McDonel came to pick him up while walking, the police jumped out of cars and that he ran and tossed a gun and was arrested by Sgt. Harris. That he

was taken to 1300 Beaubien and placed in a room by Sgt. Harris, where Larry Smith and Darrell McDonel were, and that Sgt. Harris stated that he knew that he [Jordan] and Rimmer had killed Frog (Gregory Smith) and for them to get their stories together on Rimmer. Mr. Jordan's affidavit dovetails with Mr. McDonel's affidavit and Walker hearing testimony. (Affidavits of Timothy Jordan and Darrell McDonel.)

Credible recantation evidence can be sufficient to prove actual innocence. To determine whether the recantation is reliable, a court should consider the context of the original statement as well as the context of the recantation. Known causes of wrongful conviction, like unreliable and coercive interrogation tactics, can explain why a witness offered false testimony at trial and why a reasonable juror applying the Schlup (Schlup v. Delo, 513 US 298 (1995)) standard would find a subsequent recantation more reliable.

A Schlup claim is not based on affirmative proof that the defendant did not commit the crime; it is based on the absence of guilt beyond a reasonable doubt. Schlup, at 328. A defendant is "actually innocent" under Schlup if the court finds it is more likely than not that no reasonable juror could find guilt beyond a reasonable doubt in light of the newly presented evidence.

Under Schlup, Mr. Rimmer is not required to eliminate all inference of guilt. House v. Bell, 547 US 518, 553-54 (2006). Mr. Rimmer is required, instead, to show the likely effect of the new evidence on a juror applying the reasonable doubt standard. House at 539.

For the sake of brevity, Defendant directs this court to Issue I of his brief in support.

25.

II. DEFENDANT RIMMER IS ENTITLED TO A NEW TRIAL WHERE THE PROSECUTOR SUPPRESSED FAVORABLE IMPEACHMENT EVIDENCE OF SGT. HAIDYS' AND SGT. HARRIS' ARRESTS AND TRIALS FOR ASSAULT WITH INTENT TO MURDER AND FELONIOUS ASSAULT IN VIOLATION OF MR. RIMMER'S FEDERAL CONSTITUTIONAL RIGHT UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND BRADY V. MARYLAND 373 US 83 (1963) AND GIGLIO V. UNITED STATES, 405 US 150 (1973).

On October 3, 1969, Officer Leo Haidys stood trial for felonious assault in Ingham County Circuit Court (in Mason, Michigan), where a Black youth testified that Haidys beat him and other Black youths at the Veterans' Memorial Building in Detroit. The youth, James S. Evans, testified that he was there to attend a church dance, when Leo Haidys and other white off-duty Detroit police officers attacked him and other church-going youths and that Haidys pulled out his gun, and that the officers were intoxicated and making racist comments. (See Ex. 2.)

Detroit Police Commissioner Johannes Spreen suspended nine officers involved in the incident. (See Ex. 3). Criminal charges were filed against Haidys by the Wayne County Prosecutor. Haidys received a change of venue to Mason, Michigan due to the racial underpinning of the case. Haidys was found not guilty by a jury. The case became known as the "Veterans Memorial incident."

Detroit Police Officer Sgt. James Harris was ordered to stand trial for assault with intent to murder on March 9, 1972, in what has become known as the "Rochester Street Massacre," during which a Wayne County Sheriff's Deputy was killed and three other deputies were wounded. Officer Harris was later found not guilty. (See Ex. 4.)

It also must be noted that Sgt. James Harris is currently on the Wayne County Prosecutor Office's Brady/Giglio list.

In the present case, Sgt. Harris enlisted 16-year-old Darrell McDonel as a police

agent to manufacture evidence against Mr. Rimmer. (See affidavit of Darrell McDonel.)

There are three elements to a Brady/Giglio claim: (1) the evidence at issue must be favorable to the accused either because it is exculpatory or impeaching; (2) that the evidence was suppressed by the state; (3) prejudice ensued. Stickler v. Greene, 527 US 263, 28i-82 (1999).

In Giglio, the court held that impeachment evidence is considered exculpatory for Brady purposes. Thus, under Giglio, impeachment evidence merites the same constitutional treatment as exculpatory evidence. Giglio at 154.

The evidence of the arrests and trials of Sgt. Harris and Sgt. Haidys was suppressed. The reliable evidence of a law enforcement officer's misconduct in unrelated cases is admissible to impeach that officer's credibility particularly where credibility is the central issue in the case and the evidence presented at trial, consisting of opposing stories presented by the defendant and the government agents.

Mr. Rimmer is entitled to a new trial regarding this claim.

For the sake of brevity, Defendant directs this Court to issue II of his brief in support.

VERIFICATION

I, Ricky Rimmer, pursuant to MCR 2.114, declare that the statements above are true to the best of my information, knowledge and belief.

Dated: _____ _____

(Signed) Ricky Rimmer

RELIEF REQUESTED

WHEREFORE, for the reasons stated, Defendant Ricky Rimmer respectfully requests that this Honorable Court grant the following relief:

a) Order the Wayne County Prosecutor to respond to the allegations contained in Defendant's motion and brief in support;

b) Conduct an evidentiary hearing regarding defendant's allegations contained in this motion;

c) Following review of Defendant's claims, reverse Defendant Rimmer's conviction and order a new trial.

Respectfully submitted,

_____

Ricky Rimmer, #133464
Defendant in pro per
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811-974

Dated: _____

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MOTION FOR EVIDENTIARY HEARING

Now comes Defendant Ricky Rimmer, *in pro per,* and respectfully requests this Honorable Court to grant his motion for evidentiary hearing to develop a testimonial record to support the claims contained in his Motion for New Trial and Brief in Support of said Motion. Mr. Rimmer states the following in support:

1. Defendant Rimmer has filed a motion for a new trial challenging his conviction. Mr. Rimmer has raised a claim of actual innocence based on new reliable evidence of recanting witnesses, whose recanting affidavits are

credible and collaborated. Mr. Rimmer's witnesses are willing to testify at the evidentiary hearing to the facts contained in their affidavits.

2. Defendant Rimmer has also raised a claim of suppression of evidence by the prosecution of two police witnesses' prior arrests and trials for assault with intent to murder and felonious assault, in violation of Mr. Rimmer's right to a fair trial Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972).

3. Defendant Rimmer incorporates by reference herein his motion for a new trial, affidavits and brief in support.

RELIEF REQUESTED

For the foregoing reasons, Defendant Rimmer prays that this Honorable Court grant the within motion and schedule and conduct an evidentiary hearing.

Dated: _____ _____

Ricky Rimmer, #133464
Defendant in pro per
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811-974

I. DEFENDANT RIMMER IS ENTITLED TO A NEW TRIAL BASED UPON NEWLY PRESENTED COLLABORATED RECANTING EVIDENCE WHICH CONSTITUTES A COLORABLE CLAIM OF ACTUAL INNOCENCE UNDER SCHLUP V. DELO, 513 US 298 (1995).

Credible recantation evidence can be sufficient to prove actual innocence. To determine whether the recantation is reliable, a court should consider the context of the original statement as well as the context of the recantation. Known causes of wrongful conviction, like unreliable and coercive interrogation tactics, can explain why a witness offered false testimony at trial and why a reasonable juror applying the Schlup v. Delo, 513 US 298 (1995) reasonable standard would find a subsequent recantation more reliable.

A Schlup claim is not based on affirmative proof that the defendant did not commit the crime; it is based on the absence of guilt beyond a reasonable doubt. Schlup, at 328. A defendant is "actually innocent under Schlup if the court finds it is more likely than not that no reasonable juror could find guilt beyond a reasonable doubt. Innocence under our justice system is anything less than guilt beyond a reasonable doubt. See Doe v. Menefee, 391 F.3d 147, 163 (2nd Cir. 2004). The phrase "actual innocence is confusing because it suggests that the standard required affirmative proof of innocence Carringer v. Stewart, 132 F.3d 463, 477 (9th Cir. 1997). In House v. Bell, 547 US 518 (2006), the court held that the Schlup standard does not require absolute certainty about the defendant's guilt or innocence. House, at 538.

Under Schlup, the defendant is not required to eliminate all inference of guilt. House, at 553-54. He is required, instead, to show the likely effect of new evidence on a juror applying the reasonable doubt standard. House at 539.

A claim of actual innocence under Schlup is not the same as a claim of actual innocence under Herrera v. Collins, 506 U.S. 390 (1993), which addressed a free standing claim of innocence. A Herrera claim is substantive because the defendant seeks relief on the basis of his innocence alone. A Schlup claim, to the contrary, is procedural because the defendant seeks recognition of his innocence in order to address a claim of constitutional error at trial. Where under Herrera, a defendant must provide "more convincing evidence to prove that he did not commit the crime," under Schlup, a defendant need only demonstrate that a constitutional violation at trial has probably resulted in the conviction of an individual whom no reasonable juror would have found guilty beyond a reasonable doubt. The question is not the type of evidence at issue; the question is whether the new evidence (the recantation) is reliable. House, at 537.

Wrongful convictions have been discovered as a result of later recantations, but courts have generally distrusted recantations evidence. Concerns about recantations undervalue the importance and reliability of recantations that has been proved through exonerations around the country.

According to a 2013 study by the National Registry of Exonerations, of the 1,068 exonerations around the country at that time, at least 250 of them (23%) involved witness recantations. (See Alexandra Gross and Samuel Gross, Witness Recantation Study at 2 (May 2013) http://www.law.mich.edu/special/exoneration/Documents/RecantationUpdate.5.2013.pdf.))

In some exoneration cases, courts initially rejected witness recantations and the defendant was later proved innocent with DNA evidence. As a matter of fact, the very first DNA exoneration, that of Gary Dotson, came after the court rejected a recantation.

(See National Registry of Exonerations, Gary Dotson, http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=386.))

Dotson was convicted of rape in 1977. The alleged victim, Cathleen Crowell, described her assailant to a sketch artist and later identified Dotson in a photo showup, lineup, and at trial. Dotson was convicted. In 1985, Crowell recanted to her pastor. She stated that she had fabricated the rape allegation because she had consensual sex with her boyfriend the day before and feared that she may be pregnant, a fear that was never realized. Crowell stated that she created the rape story in case she needed to explain the pregnancy to her parents. Crowell stated that she identified Dotson after police pressured her, pointing out how closely Dotson's exoneration came four years after the victim recanted.

When Crowell recanted, the court found Crowell's trial testimony was more credible than her recantation and affirmed Dotson's conviction. Dotson made several further attempts to prove his innocence, but his efforts were rejected by the courts. Crowell's recantation was ultimately corroborated when DNA proved that semen found in Crowell's underwear on the night of the alleged rape was that of her boyfriend. Dotson's exoneration came four years after the victim recanted. Had DNA evidence been unavailable, the courts would have continued to hold Dotson in prison, believing Crowell's trial testimony was true and her recantation false. Other cases where the recantations of witnesses were rejected by the court but years later DNA proved the recantations of the witnesses to be true: (See Shawn Armbrust, Reevaluating Recanting Witnesses, 28 B.C. Third World L.J. 75, N. 80, at 91, exonerations of Jerry Watkins and Clarence Elkins.)

What of the defendant who has a reliable recantation witness, but that claim is rejected by the trial court and that defendant lacks DNA evidence? The sources of error that lead to wrongful convictions exist whether or not there is DNA to prove that the conviction was wrongful. When a court is faced with a defendant claiming innocence who raises recantation evidence, the court must analyze the case for sources of error known to contribute to wrongful convictions. The court should look toward evidence that corroborates the recantation, including the circumstances that gave rise to the initial false statement. As the Wisconsin Supreme Court stated in State v. McCallum 561 N.W. 2d 797 para¶ 23-24 *1997):

> "¶23. We agree with the court of appeals that the difficulty in this kind of case is manifest: How can a defendant corroborate the recantation of an accusation that involves solely the credibility of the complainant, inasmuch as there is no physical evidence and no witness. McCallum must corroborate H.L.'s recantation of her uncorroborated accusation. The court of appeals, recognizing the unique difficulty presented by this case, properly concluded that McCallum met the corroboration requirement:
>
> [T]he degree and extent of the corroboration required varies from case to case based on its individual circumstances. Here, the sexual assault allegation was made under circumstances where no others witnessed the event. Further, there is no physical evidence that could corroborate the original allegation or the recantation. Under these circumstances, requiring a defendant to redress a false allegation with significant independent corroboration of the falsity would place an impossible burden upon any wrongly accused defendant. We conclude, under the circumstances presented here, the existence of a feasible motive for the false testimony together with circumstantial guarantees of the trustworthiness of the recantation are sufficient to meet the corroboration requirement.
>
> ¶24. *State v. McCallum,* 198 Wis. 2d 149, 159-0, 542 N.W.2d 184 (1995). We agree. The rule has been, and remains, that recantation testimony must be corroborated by other newly discovered evidence. We hold that the corroboration requirement in a recantation *478 case is met if: (1) there is a feasible motive for the initial false statement; and, (2) there are circumstantial guarantees of the trustworthiness of the recantation." McCallum, at 797.

In the exoneration cases discussed above, each exoneree was fortunate to have biological evidence available to prove their innocence. Those DNA exonerees also

offered recantation evidence that was ignored or discounted. Recantation evidence should be considered for what it represents: evidence that something went wrong. When coupled with the evidence of conduct proven to be a source of error in other wrongful convictions, that recantation evidence should be given serious consideration to support a claim for actual innocence.

Defendant Rimmer submits the following recantation evidence:

Darrell McDonel swore out an affidavit stating:

> "1. That on or about October 9, 1975, I received a telephone call from Larry Smith, requesting that I come down to the Detroit Police Headquarters (1300 Beaubien).
>
> 2. That upon my arrival I believe that I was informed to go to the 5th Floor, where I was met by Sgt. James Harris and Larry Smith. I was then informed by Smith and Sgt. Harris that Ricky Rimmer and Timothy Jordan had killed my best friend Gregory Smith (Frog), who was Larry Smith's little brother.
>
> 3. That Sgt. Harris stated to me that he wanted me to help him arrest Rimmer and Jordan.
>
> 4. Sgt. Harris told me to call Jordan and tell him that I had a "lick up" (meaning a robbery) and that I was coming to pick him up.
>
> 5. That I agreed to set Jordan up for the police based on what Larry Smith and Sgt. Harris had told me regarding his involvement in the death of my best friend.
>
> 6. That I did go to pick Jordan up. Upon arrival, Jordan came out of the house, and the police jumped out of their cars. Jordan tried to run but was caught by the police.
>
> 7. That later that evening, myself, Larry Smith, Timothy Jordan, and Sgt. James Harris were in a room together and Sgt. Harris told us to get our stories together on Ricky Rimmer because Rimmer was the person he wanted us to say was the one who shot the car salesman.
>
> 8. That myself, Larry Smith and Timothy Jordan had conversations in that room at police headquarters, during which we agreed to say that Ricky Rimmer killed the car salesman.
>
> 9. That Sgt. Harris took a statement from me. Some of the details I did make in my statement to Sgt. Harris, but I did not tell Sgt. Harris that I saw Ricky Rimmer run past Jordan stating that "he got the money," and chase the salesman while shooting, and that when the man fell to the ground, Rimmer took money from his pocket.
>
> 10. That most of my statement to Sgt. Harris was written by Harris and he told me to sign it, which I did.

11. That most of the contents of that statement were Sgt. Harris' thoughts and ideas. I agreed to it because I had been told by Sgt. Harris and Larry Smith that Ricky Rimmer killed my best friend.

12. That I have had a relationship with the Smith family for years. At the time that Gregory Smith (Frog) got killed, I was 16 years old. I had been dating Gregory Smith's sister, who I had a daughter by in 1982, who is now 36.

13. That I did not see Ricky Rimmer shoot and rob the car salesman on August 7, 1975, nor was Ricky Rimmer present during the planning of the robbery.

14. That my testimony during the trial of Ricky Rimmer was based on the false statement that Sgt. Harris submitted to the court, which was in his words and which I agreed to in order to get back at the person whom I was told was responsible for killing my best friend. (Affidavit of Darrell McDonel Ex. 1.)"

Timothy Jordan swore out an affidavit stating:

"1. On or about October 9, 1975, I was arrested in the area of Van Dyke and Marion
Streets in the City of Detroit, along with Darrell McDonel.

2. That I had received a telephone call from McDonel telling me that he had a robbery set up and asking if I wanted to get in on it. I told him that I did. McDonel told me that he was on his way to pick me up.

3. That when I came out of the house and started walking with McDonel, the police jumped out of cars, and I ran and tossed a gun, and was arrested.

4. That I was taken to 1300 Beaubien on the 5th floor. There, I was placed in a room by Sgt. James Harris where Larry Smith and Darrell McDonel were. Sgt. Harris told us to go ahead and get our stories together. Sgt. Harris then said that he knew that myself and Ricky Rimmer had killed Frog (Gregory Smith), but that the concern at this time was to arrest Rimmer for the murder at the car lot.

5. At this point, Larry Smith said that he wanted to get back at Rimmer and that we needed to get our statements together saying the Rimmer killed the car salesman.

6. That I agreed to make a statement saying that Ricky Rimmer was involved in the murder at the car lot.

7. Although I did tell Sgt. James Harris that Rimmer was involved in the planning of the robbery, and that he was present during the robbery, I said this because I was told by Sgt. Harris that he needed me to place Rimmer at the robbery, and because I was sitting in the room with Larry Smith and Darrell McDonel, who were also going to say the same thing.

8. At no time during my interview with Sgt. James Harris did I tell him that I saw Ricky Rimmer chasing the car salesman while shooting at him.

9. Ricky Rimmer was not present during the robbery of the car salesman. (Affidavit of Timothy Jordan Ex.2.)"

Here, both Jordan and McDonel's affidavits contain reliable recantation evidence (Jordan did not testify at trial; Sgt. Harris read his confession, which implicated Mr. Rimmer to the jury), in that their recantations shine a bright light on the circumstances that gave rise to their recantations as well as the circumstances that gave rise to the original false confession/statements. McDonel's recantation is supported by the trial transcript, where he testified at a Walker hearing (People v. Walker, 374 Mich, 331 (1965) for Jordan during trial, but outside the presence of the jury, that he was at Larry Smith's family's home and that Larry called and that he talked to both Harris and Smith on the telephone, and that Harris and Smith asked him to come down to the police headquarters, which he did; he further testified that he did not give a statement to Sgt. Harris when he went to police headquarters. (TT 252-53.)

McDonel was never asked nor did he state what the meeting with Sgt. Harris and Larry Smith was about. Sgt. Harris never reported this meeting of October 9th, 1975. The October 9th, 1975 date is very important because McDonel was arrested with Jordan on October 9th, 1975.

When McDonel's testimony that he met with Harris and Smith on October 9th, 1975 is connected to McDonel's arrest with Jordan on October 9th, 1975, it makes McDonel's recantation that:

(1) He was told by Sgt. Harris and Larry Smith that Rimmer and Jordan had killed his best friend Gregory Smith (Frog);

(2) He, Smith and Sgt. Harris devised a plan to call Jordan so that Sgt. Harris could arrest him once he (Jordan) came of the house;

(3) He, Jordan, Smith and Sgt. Harris conspired to frame Mr. Rimmer for the murder by making false confession/statements to be submitted in court against Mr. Rimmer.

Recantation evidence is sufficient to prove "actual innocence" under Schlup if the recantation evidence is reliable.

It is clear that the only true way to determine whether recantation evidence is reliable is to consider the recantation in light of the circumstances that caused the recantation as well as the circumstances that caused the original confession/statements to be false.

Mr. Jordan's recantation is also reliable in that:

1) He states that Sgt. Harris arrested him and Darrel McDonel on October 9, 1975;
2) He confirms that McDonel did call him and asked him to go on a robbery with him;
3) He confirms that at police headquarters, he was placed in a room by Sgt. Harris with Larry Smith and Darrell McDonel and that Harris told them to get their stories together, stating that Mr. Rimmer killed the victim at the car lot, and that Sgt. Harris told him in front of Smith and McDonel that he (Harris) knew that he and Mr. Rimmer had killed Gregory Smith, Larry Smith's brother and Darrell McDonel's best friend.
4) He confirms that a conspiracy took place between himself, Larry Smith, Sgt. Harris and Darrell McDonel to submit false evidence (i.e. confession/ statements) at the court proceedings in People of the State of Michigan v.

Ricky Rimmer. Timothy Jordan in his affidavit also makes one very important statement that goes to the heart of Mr. Rimmer's conviction:

> "Ricky Rimmer was not present during the robbery of the car salesman." (Affidavit of Timothy Jordan Ex. 2 ¶9.)

extremely trustworthy and would be on all fours with any corroboration requirement. The recantations of Mr. Jordan and Mr. McDonel are of the "highest" quality for purposes of "reliability." This is even more so because their recantation evidence has support from the trial transcripts, which are peppered with acts of Sgt. Harris and Sgt. Leo Haidy's successful attempts to manufacture evidence in this case, for example: Sgt. Haidys testified that Larry Smith called him on the morning that he was to testify at trial and told him (Haidys) that he could not testify because he could not be labeled as a snitch, but that everything he (Smith) testified to at the preliminary examination, and that everything he had told him, was true. Larry Smith was called to the witness stand by the court and denied that he told Sgt. Haidys that he did not want to testify. Smith further testified: That he simply called Haidys and informed him that he did not have transportation to the courthouse. Smith went on to inform the court that his preliminary examination testimony was false and that he wanted revenge because Sgt. Harris had told him that Rimmer and Jordan had killed his little brother. The court then refused to allow Smith to testify before the jury and allowed preliminary examination testimony to be read to the jury. Smith was not allowed to testify at trial, but Sgt. Haidys did. Haidys testified that he also took a statement from Smith. The trial court appeared to sense something was amiss after Haidys and Smith testified outside the presence of the jury, because the court issued a stern order from the bench that Sgt. Haidys and Sgt. Harris were not to ever have any form of

communication with Larry Smith. (See Issue II for a complete breakdown of the testimony of Smith and Sgt. Haidys.) Another manipulation of evidence by Sgt. Haidys came about when prosecution witness Harry Wilkie testified that days after the crime that detectives came to his house and showed him photographs, he could not identify the shooter, when asked who the detectives were, he testified that he did not know. Sgt. Haidys testified that Larry Smith called him on the morning before the jury and allowed preliminary examination testimony to be read to the jury. Smith was not allowed to testify at trial, but Sgt. Haidys did. Haidys testified that he also took a statement from Smith. The trial court appeared to sense something was amiss after Haidys and Smith testified outside the presence of the jury, because the court issued a stern order from bench that Sgt. Haidys and Sgt. Harris were not to ever have any form of communication with Larry Smith. (See Issue II for a complete breakdown of the testimony of Smith and Sgt. Haidys.) Another manipulation of evidence by Sgt. Haidys came about when prosecution witness Harry Wilkie testified that days after the crime that detectives came to his house and showed him photographs, he could not identify the shooter, when asked who the detectives were, he testified that he did not know. When Sgt. Haidys testified, he was asked for the names of the officers who took the photographs to Wilkie's home, he did not know who they were and that there were no reports of a photo line-up taking place at Wilkie's home. Sgt. Haidys testified that he was the Officer in Charge. This photo line-up was simply a manipulation of the identification evidence so that the recurrence of Mr. Rimmer's image would be in the mind of Mr. Wilkie at the next proceeding, which was the corporal line-up, where Wilkie couldn't make a positive identification, but he said that number 4 "looks like him," and then upon seeing Mr. Rimmer during trial sitting next to defense counsel,

Mr. Wilkie's "No" identification during the "photo line-up"—to the "looks like him" at the corporal line-up to "pointing him out" in the court room to the jury. To this day, no one knows who the mysterious officers were who conducted the photo line-up at Wilkie's home.

Even if true that many recanting affidavits are false, and even if it is true that most recanting affidavits are false (something that Mr. Rimmer does not concede), that does not justify an irrebuttable presumption that all recanting affidavits are false.

The correct standard for jurors to employ in judging witness credibility was stated in Weiler vs. United States, 323 US 606 (1945):

> "In gauging the truth of conflicting evidence, a jury has no simple formulation of weights and measures upon which to rely. The touchstone is always credibility; the ultimate measure of testimonial worth is quality and not quantity. Triers of fact-finding tribunals are, with rare exceptions, free in the exercise of their honest judgment, to prefer the testimony of a single witness to that of many."

Or, as the court stated more succinctly in United States vs. Scheffer, 523 US 303, 308 (1998):

> "A fundamental premise of our criminal trial system is that the jury is the lie detector."

How is it that Jordan, Smith and McDonel are considered reliable when they favor the government, but are automatically unreliable when they oppose the government? Where there is important evidence, not available at trial, that three chief prosecution witnesses conspired with Sgt. Harris to lie about matters central to Mr. Rimmer's case?"

> "Our cases establish, at a minimum, that criminal defendants have the right to put before a jury evidence that might influence the determination of guilt," Pennsylvania vs. Ritchie, 480 US 39, 56 (1987); People vs. Stanaway, 446 Mich 643, 665 (1994)."

Testimony that the three witnesses against Mr. Rimmer admitted that they were involved in the crime and that Mr. Rimmer was not even there, contrary to their trial testimony, is certainly "evidence that might influence the determination of guilt."

The key factor is the materiality of the evidence and how a jury might evaluate it in the context of the case. "[I]f the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed." United States v. Agurs, 427 US 97 (1976).

The standard, then, is not whether the facts "unquestionably establish" Mr. Rimmer's innocence. The standard is whether the facts "undermine confidence in the result of the trial." As the court held in Souter v. Jones, 395 F.3d 577 (6th Cir. 2005):

> "[T]he new affidavits do not merely add to the defense, but also deduct from the prosecution. As a result, the affidavits can be considered new reliable evidence upon which an actual innocence claim may be based."

The same is true in the case at bar, in that the new recantation evidence adds to the defense and deducts from the prosecution.

Mr. Rimmer has plainly shown evidence of innocence sufficient to "undermine confidence in the result of the trial. Mr. Rimmer submits that the evidence submitted at his trial that caused his conviction came from the following witnesses:

1. Timothy Jordan – confession;
2. Darrell McDonel – statement/testimony;
3. Larry Smith's pre-exam testimony;
4. Harry Wilkie's identification.

The big problem here is that none of these witnesses testified at trial but Harry Wilkie. Darrell McDonel testified at trial, but denied that he told Sgt. Harris that Mr.

Rimmer was chasing and shooting at the victim; McDonel was impeached by his statement to Sgt. Harris—Sgt. Harris testified to McDonel's statement as being correct. Therefore, the only prosecution witnesses to testify at Mr. Rimmel's trial (save Mr. Wilkie) were:

Sgt. James Harris, and

Sgt. Leo Haidys.

Sgt. Harris read Jordan's confession to the jury; Sgt. Harris testified to the correctness of the statement he took from McDonel, and he testified that he took a statement from Smith. Sgt. Leo Haidys testified (outside the presence of the jury) that Larry Smith told him on the morning he was to testify before the jury that he couldn't because he would be viewed as a rat, and that Smith told him his preliminary exam testimony was true and what he had told him about the crime was also true. However, Smith took the witness stand and denied that he said this to Sgt. Haidys.

The court, based upon Sgt. Haidys' testimony, allowed Smith's preliminary examination testimony to be read to the jury. Sgt. Haidys is also held responsible for the illegal photo show-up at Mr. Wilkie's home, this is so because Sgt. Harris was the officer in charge of the case and thus the only person who could dispatch officers to conduct the photo line-up. Nor, did anyone file a report of Sgt. Harris using a 16-year-old prosecution witness (Darrel McDonel) as a police agent in the arrest of Timothy Jordan. This plot was hatched when Larry Smith and Sgt. Harris summoned McDonel down to police headquarters on the 9th of October, as a matter of fact, Larry Smith was also acting as a police agent. Viewing the time line for October 9, 1975 fairly, their activities shock the conscience.

HARRIS	SMITH	McDONEL
1) Summoned Smith from the County Jail to DPD.	1) The day before, on 10/8/75, Smith had given Sgt. Harris his statement. Thus, 10/9/75 is his 2nd time at DPD in 2 days.	1) On the morning of 10/9/75, McDonel gives his statement to Sgt. Harris at 10:30 a.m.
2) Called McDonel down to DPD.	2) Calls McDonel down to DPD.	2) Arrived at DPD after phone conversation with Sgt. Harris and Smith, for the second time that day.
3) Harris hatched the plot to use 16 yr. old McDonel to arrest Jordan.	3) Smith agrees to the plot.	3) McDonel agrees to the plot.
4) Harris took McDonel to the Jordan home.	4) Smith either stays at DPDor is returned to the County jail.	4) McDonel and Harris proceed to the Jordan home.
5) Jordan is arrested once McDonel lures him out of the Home and taken to DPD HQ, Placed in a room with Smith and McDonel.	5) Smith is placed in room with Jordan and McDonel. This is Smith's third time at DPD with Sgt. Harris on 10/9/75. .	5) McDonel is placed in room with Smith and Jordan. This is McDonel's third time at DPD with Smith and Harris. McDonel, Smith and Jordan agree to make false statements against Rimmer.
6) Harris tells Jordan that he knows that he (Jordan) and Rimmer killed Gregory Smith. Harris then tells Jordan, Smith and McDonel to get their stories together because he wants Rimmer.	Smith, Jordan and McDonel agree to make false confessions/ statements against Rimmer	McDonel, Smith and Jordan agree to make false statements against Rimmer.

Mr. Rimmer submits that Sgt. Harris' close relationship with Smith and McDonel during October 9, 1975 when they acted as police agents for DPD during the period when they were taken and placed in the room with Jordan to assist Sgt. James Harris to get incriminating evidence against Mr. Rimmer. Clearly, Jordan had no knowledge of how his arrest came about, but what is important is that McDonel and Smith knew and proceeded to pump Jordan for incriminating information regarding Mr. Rimmer and turn it over to Sgt. Harris.

There have never been any reports by Sgt. James Harris regarding the undercover activities of Larry Smith and Darrel McDonel, to obtain incriminating evidence against Mr. Rimmer.

None of the witnesses testified at Mr. Rimmer's trial except McDonel, and he denied that he had told Harris that Mr. Rimmer chased and shot the victim, but Sgt. Harris testified that the statement from McDonel was true and correct. Therefore, the only prosecution witnesses to testify against Mr. Rimmer were Sgt. Harris and Sgt. Haidys. Jordan, Smith and McDonel did not testify. Sgt. Harris and Haidys testified in open court to false manufactured evidence that they created at DPD. Said evidence has been shown to be false, manufactured and therefore tainted.

Again, as the court stated in Souter v. Jones, 395 F.3d----(2005), "[T]he new affidavits do not merely add to the defense, but also deduct from the prosecution." Souter, *supra*.

Mr. Rimmer states the proper focus is the cause of the wrongful conviction, as well as the evidence that later confirms that the conviction was wrongful. Recantations are important evidence because that evidence can undermine confidence in the conviction. Mr. Rimmer has submitted evidence that strongly "corroborates" the recantation affidavits.

The only thing that Mr. Rimmer's jury had before them was nothing more than Sgt. James Harris' and Sgt. Leo Haidys' word that Larry Smith, Darrell McDonel, and Timothy Jordan confessed to their involvement in the murder of Joseph Kratz and incriminated Ricky Rimmer. Everything the state claims happened in the interrogation room depends on believing these two seasoned detectives' (Haidys and Harris) testimony. Without their testimony, the state could not succeed in its case against Ricky Rimmer. The Michigan and United States constitutions require a fair

trial, and one essential element of fairness is the prosecution's obligation to turn over exculpatory evidence.

This never happened in Mr. Rimmer's case and so the jury and judge trusted the two seasoned detectives without hearing of their long history of arrests for assaults, murder, and attempted murder, lies and misconduct. A police officer "commands the respect of the jury." People v. Page, 41 Mich. App. 99 (Mich. Ct. App. 1972). Juries hold police officers in high regard due to their profession as honest public servants. When that trust and respect is violated, the jury cannot serve its true function.

Mr. Rimmer testified that he was innocent. The state's narrative (as prepared and performed on the witness stand by two seasoned police witnesses) was that Smith, McDonel and Jordan gave statements that implicated Mr. Rimmer. The testimony of Sgt. Haidys and Sgt. Harris was effectively unimpeachable without access to the undisclosed evidence of their arrests for attempted murder of a law enforcement officer (Sgt. James Harris), felonious assault charges for using his service weapon off duty to beat a Black youth while uttering racist comments (Sgt. Leo Haidys). Both of these officers were tried by juries. Sgt. Harris was found not guilty by a Recorders Court jury for the attempted murder of the Wayne County Deputy Sheriff in 1972. Four years prior to Mr. Rimmer's trial, Sgt. Leo Haidys was found not guilty on the felonious assault charge by an Ingham County Circuit Court jury in Mason, Michigan in 1970. (A change of venue was granted due tp the racial overtones of the case.)

Mr. Rimmer has shown a feasible motive for the initial false statements of McDonel, Smith and Jordan and there are clear circumstantial guarantees of the trustworthiness of their recantations. Defendant Rimmer is entitled to a new trial.

II. DEFENDANT RIMMER IS ENTITLED TO A NEW TRIAL WHERE THE PROSECUTION SUPPRESSED FAVORABLE IMPEACHMENT EVIDENCE OF (1) SGT. LEO HAIDYS' ARREST AND TRIAL FOR FELONIOUS ASSAULT WITH HIS SERVICE WEAPON, AND THE USE OF RACIST TERMS SUCH AS "NIGGER;" (2) THE SUPPRESSION OF FAVORABLE IMPEACHMENT EVIDENCE OF SGT. JAMES HARRIS' ARREST AND TRIAL FOR ASSAULT WITH INTENT TO MURDER ANOTHER LAW ENFORCEMENT OFFICER; AND (3) HARRIS' SUPPRESSION AT TRIAL OF HIS USE OF PROSECUTION WITNESS DARRELL MCDONEL AS A POLICE AGENT, ALL IN VIOLATION OF MR. RIMMER'S FEDERAL CONSTITUTIONAL RIGHT UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND BRADY V. MARYLAND 373 U.S. 83 (1963), GIGLIO V. UNITED STATES, 405 U.S. 150 (1972).

In Milke v. Ryan, 711 F.3d 998, 1025 (9th Cir. 2013), concurring opinion by Chief Judge Kozinski, the Court asked:

> "Could the People of Arizona feel confident in taking Milke's life when the only thread on which her conviction hangs is the word of a policeman with a record of dishonesty and disrespect for the law." Milke, at 1025.

In the present case, there were two dishonest police officers who had disrespect for the law:

OFFICER LEO HAIDYS

On October 3, 1969, Officer Haidys stood trial for felonious assault in Ingham County Circuit Court (in Mason, Michigan), where a black youth testified that Haidys beat him and other black youths at the Veterans Memorial Building in Detroit. The youth, James S. Evans, testified that he was there to attend a church dance, when Leo Haidys and other white off-duty Detroit police officers attacked him and other church-going black youths and that Haidys pulled out his gun, and that the officers were intoxicated and making racist comments. (See Ex. 3, Detroit Free Press, Friday, October 3, 1969).

Detroit Police Commissioner Johannes Spreen suspended nine of the police officers involved in the incident (See Ex. 4, Detroit Under Fire, November 1, 1968.) Criminal charges were filed against Haidys and a second officer. Haidys received a change of venue to Mason, Michigan due to the racial underpinnings of the case. Haidys was found "not guilty" by a jury. The case became known as the "Veterans Memorial Incident."

OFFICER JAMES HARRIS

Detroit Police Officer James Harris was ordered to stand trial for assault with intent to murder on March 9, 1972, in what has become known as "The Rochester Street Massacre," during which a Wayne County Sheriff's Deputy was killed and three other deputies were wounded. Harris was later found not guilty. (See Ex. 5, Detroit Free Press April 4, 1972).

Suppression by Sgt. Harris of evidence that he enlisted 16-yr.-old Darrell McDonnel to act as a police agent.

During Mr. Rimmer's trial, the following colloquy took place between witness McDonel and the prosecutor:

By: Mr. Kenny (Prosecutor)

> Q. WITH REGARDS TO YOUR STATEMENT OF OCTOBER 9TH, YOU SAID YOU *WEREN'T* UNDER ARREST AT THE TIME YOU MADE THAT STATEMENT?
>
> A. *NO, I WASN'T.*
>
> Q. DID YOU AGREE TO MAKE TO MAKE THAT STATEMENT?

A. DID I AGREE?

Q. YEAH. WHEN YOU TALKED TO SERGEANT HARRIS.

A. YEAH.

Q. AND DID SERGEANT HARRIS CONTACT YOU OR DID YOU CONTACT HIM?

A. LARRY SMITH CONTACTED ME.

Q. AND AFTER LARRY SMITH CONTACTED YOU, YOU THEN DECIDED TO GO TO HOMICIDE?

A. NO, I WAS TOLD. THAT HE WANTED TO QUESTION ME AND TALK TO ME, AND THAT THERE WOULD BE NO ARRESTS, YOU KNOW.

Q. THEN YOU AGREED TO GIVE THE STATEMENT?

A. *NO*, THE STATEMENT WASN'T MENTIONED THEN. (TT 252, 253.)

On re-cross examination by defense counsel, the following took place:

By: Mr. Moore (defense counsel)

Q. OKAY. NOW YOU SAY THAT YOU WERE CONTACTED BY LARRY SMITH AND LARRY SMITH TOLD YOU TO GO DOWN TO HOMICIDE. DID HE TELL YOU WHAT TO SAY?

A. NO. HUH-HUH. WHEN HE CALLED ME I TALKED TO --- I CAN'T THINK OF WHO IT WAS RIGHT OFF—BUT I TALKED TO AN OFFICER

FROM HOMICIDE.

Q. OH, I SEE. AND LARRY SMITH CALLED YOU FROM HOMICIDE, SAID I'M HERE AT HOMICIDE. I WANT YOU TO TALK TO OFFICER SOMEBODY?

A. NO, HE SAID HOMICIDE WANTED TO TALK TO ME.

Q. WANTED TO TALK. NOW LET ME UNDERSTAND THE SCENE SO THAT THE JURY AND ALL OF US UNDERSTAND YOU CORRECTLY. YOU GOT A PHONE CALL TO YOUR HOUSE, IS THAT WHAT YOU'RE SAYING.

A. NO. I WAS OVER LARRY SMITH'S HOUSE.

Q. YOU WERE OVER LARRY SMITH'S HOUSE. WAS LARRY SMITH THERE WITH YOU?

A. NO.

Q. WHO WAS THERE WITH YOU?

A. AT THE SMITH HOUSE?

Q. YES.

A. THE SMITH FAMILY.

Q. THE SMITH FAMILY. THEY WERE TALKING TO YOU ABOUT LARRY, WERE THEY?

A. NO.

Q. THEY WERE TALKING TO YOU ABOUT THIS WHOLE MATTER. WERE YOU TALKING ABOUT THIS WITH ANYBODY?

A. HUH-HUH.

Q. ALL RIGHT. THE PHONE RANG, IS THAT WHAT YOU'RE TELLING US?

A. YES.

Q. AND AS THE PHONE RANG IT WAS INDICATED THAT YOU WERE WANTED ON THE PHONE?

A. RIGHT.

Q. AND WHEN YOU SAID HELLO TO THE PHONE, WHO WAS ON THE OTHER END?

A. LARRY.

Q. HE SAID TO YOU I'M LARRY SMITH?

A. NO.

Q. YOU RECOGNIZED HIS VOICE?

A. YES.

Q. AND WHAT DID HE SAY? WHAT DID HE SAY TO YOU AT THAT POINT?

A. HE SAY, YEAH. THESE HOMICIDE WANT TO TALK TO ME, YOU KNOW.

Q. I SEE. DID HE TELL YOU THAT HE WAS DOWN AT HOMICIDE AT THAT POINT?

A. NO, I DIDN'T KNOW.

Q. YOU DIDN'T KNOW?

A. NO.

Q. I SEE. AND SO DID YOU TALK TO SOMEONE FROM HOMICIDE AT THE NEXT MOMENT ON THE PHONE?

A. YES.

Q. I SEE. AND IT WAS LARRY SMITH OR THE HOMICIDE PERSON THAT YOU TALKED TO ON THE PHONE AND PROMISED YOU NO ARREST?

A. IT WAS THE HOMICIDE, RIGHT.

Q. THEY SAID THEY WOULDN'T ARREST YOU, THEY JUST WANTED TO TALK TO YOU, IS THAT RIGHT?

A. YES.

Q. ALL RIGHT. DID LARRY TELL YOU AT THAT TIME THAT HE WAS TALKING TO THEM?

A. NO, HE DIDN'T.

Q. I SEE. DID LARRY TELL YOU AT THAT TIME THAT HE WAS TALKING TO THEM?

A. NO, HE DIDN'T.

Q. I SEE. DID HE TELL YOU, OR DID YOU KNOW IF HE WAS UNDER ARREST IN CONNECTION WITH THIS MATTER AT THAT TIME?

A. NO. HE WAS—HE WAS ALREADY IN THE COUNTY JAIL.

Q. I SEE. SO THAT IS WHEN—AND UNDER THE CIRCUMSTANCES YOU AGREED TO GO DOWN AND TALK TO THE HOMICIDE?

A. YES. (TT 254-257.)

In his affidavit, Mr. McDonel states in part the following:

> That on or about October 9, 1975, I received a telephone call from Larry Smith, requesting that I come down to the Detroit Police Headquarters (1300 Beaubien).
>
> That upon my arrival I believe that I was informed to go to the 5th Floor, where I was met by Sgt. James Harris and Larry Smith. I was then informed by Smith and Sgt. Harris that Ricky Rimmer and Timothy Jordan had killed my best friend Gregory Smith (Frog), who was Larry Smith's little brother.
>
> That Sgt. Harris stated to me that he wanted me to help him arrest Rimmer and Jordan. Sgt. Harris told me to call Jordan and tell him that I had a "lick up" (meaning a robbery) and that I was coming to pick him up.
>
> That I agreed to set Jordan up for the police based on what Larry Smith and Sgt. Harris had told me regarding his involvement in the death of my best friend.
>
> That I did go to pick Jordan up. Upon arrival, Jordan came out of the house, and the police jumped out of their cars. Jordan tried to run but was caught by the police.

> That later that evening, myself, Larry Smith, Timothy Jordan, and Sgt. James Harris were in a room together and Sgt. Harris told us to get our stories together on Ricky Rimmer because Rimmer was the person he wanted us to say was the one who shot the car salesman.
>
> That myself, Larry Smith and Timothy Jordan had conversations in that room at police headquarters, during which we agreed to say that Ricky Rimmer killed the car salesman. (See Ex. 4.)

Sgt. James Harris suppressed evidence as to what took place during Jordan's arrest. Sgt. Harris and Larry Smith contacted McDonel and had him come down to police headquarters, where Harris, Smith, and McDonel set a plan in motion to have Jordan arrested. This plan consisted of having McDonel telephone Jordan and tell him that he had a robbery set up. Once Jordan agreed to go, Harris drove McDonel to the area of Jordan's home and let him make contact with Jordan. Once Jordan was out of the house Harris and other officers jumped out of cars and arrested Jordan and McDonel.

McDonel and Jordan were taken to police headquarters to the 5th floor where they were placed in a room with Larry Smith, where Sgt. Harris told them to get their stories together because he wanted Rimmer. (Affidavit of Darrell McDonel.) (Affidavit of Timothy Jordan.) (See Walker hearing testimony of D. McDonel. TT 294-306).

At trial, Sgt. Harris testified:

By: Mr. Price, Attorney for Timothy Jordan:

Q. NOW, DID THERE EVERY COME A TIME WHEN THE 3 OF THESE MEN WHO WERE THERE, LARRY SMITH, MCDONEL AND MR. JORDAN, WERE ASKED TO GO INTO AN ADJACENT ROOM AND GET THEIR STORY TOGETHER.

A. MR. PRICE, I STATED TO YOU I DON'T RECALL SEEING MR. SMITH. HE MIGHT HAVE BEEN THERE, I DON'T KNOW.

Q. ALL RIGHT. DID YOU EVER HEAR—WELL FIRST, DID YOU EVER MAKE THAT STATEMENT TO TELL THEM TO GO IN THERE AND GET THEIR STORIES TOGETHER?

A. DID I EVER? I DON'T BELIEVE I EVER SAID THAT, NO.

Q. ALL RIGHT, DID YOU HEAR ANYONE ELSE SAY THAT, OFFICER HARRIS?

A. MR. PRICE, I WOULD HAVE TO THINK BEFORE I GIVE YOU AN ANSWER.

Q. ALL RIGHT.

A. OK. I BELIEVE SO; IT MIGHT HAVE HAPPENED. I DON'T KNOW.

Q. ALL RIGHT. BUT NOW WERE YOU WHEN THEY CAME OUT OF THIS OTHER ROOM?

A. NO, I DON'T BELIEVE SO, NO.

Q. ARE YOU SAYING THEN THAT YOU TOOK THE STATEMENT FROM MR. JORDAN BEFORE THE STATEMENT WAS MADE TO THEM TO GO INTO THE ROOM AND GET THEIR STATEMENT TOGETHER?

A. WHEN I TOOK THE STATEMENT FROM MR. JORDAN—

Q. JUST ONE MINUTES, PLEASE. LET ME ASK THE QUESTION. CAN YOU ANSWER THAT YES OR NO AS TO WHETHER OR NOT IT WAS BEFORE THEY WENT INTO THE ROOM---WHEN THEY WERE TOLD TO GO INTO THE ROOM TO GET THEIR STORY TOGETHER THAT YOU TOOK THE

STATEMENT FROM MR. JORDAN OR WAS IT AFTER THEY CAME BACK OUT OF THE ROOM, OR YOU DIDN'T KNOW?

A. NO, I CAN'T GIVE YOU A YES OR NO ANSWER.

Q. ALL RIGHT, CAN YOU ANSWER YES OR NO?

A. NO, I CAN'T.

Q. OH. WELL THEN YOU DON'T KNOW WHEN YOU TOOK THE STATEMENT FROM HIM THEN, WHETHER IT WAS IT WAS BEFORE THAT OR AFTER THAT?

A. I KNOW WHEN I TOOK THE STATEMENT FROM HIM.

Q. I SEE. WAS IT AFTER HE – THIS IS A YES OR NO QUESTION AGAIN— WAS IT WHETHER OR NOT HE CAME OUT OF THE ROOM OR WAS IT BEFORE HE WENT INTO THE ROOM?

A. IT HAD TO BE BEFORE. (TT p. 503, 04, 05).

In the present case, the prosecutor did not use the tools at his disposal fairly. For example, Mr. Larry Smith gave his statement on October 8, 1975 at 12:15 p.m. (TT 523.) It begs the question why was Larry Smith on the 5th floor of the Homicide Section on October 9, 1975 with Sgt. James Harris. This also happened to be the date that Sgt. Harris testified that he took the statement from Darrell McDonel at 10:40 a.m. Once again, the question arises when McDonel talked to Mr. Smith on the telephone and he proceeded down to police headquarters, how did Mr. McDonel end up being arrested at 9:00 p.m. with Mr. Jordan?

It is clear now as to what happened. On October 8, 1975, at 12:15 p.m., Larry Smith gave a statement to Sgt. Harris. The next day, on October 9 at 10:30 a.m. Mr. McDonel gave Sgt. Harris a statement. Later that evening, McDonel was at the Smith

family home when Larry Smith called from jail. He spoke to Smith, who requested that he come down to Detroit police headquarters and he also spoke to Sgt. Harris who told him he wanted to talk to him at police headquarters and there would be no arrest. Once he arrived at the headquarters, he was told by Harris and Smith that Rimmer and Jordan were the men who had killed Gregory Smith (Frog), Smith's brother and McDonel's best friend.

This is when Harris, Smith and McDonel devised a plan to lure Jordan out of his house on the pretext that McDonel had set up a robbery and wanted Jordan to participate. Upon making contact with Jordan at his house, the police jumped out of their cars and arrested McDonel and Jordan, who ran. The police confiscated a .38 caliber gun and a stocking in the fashion of a mask. (See Ex. 6—Report of Sgt. Warren Harris and crew.) They were taken to the DPD headquarters and put in a room where Larry Smith awaited them. This is when they concocted their stories about Rimmer's role in the homicide. Jordan's statement was taken at 9:30 p.m. Even Sgt. Harris admitted at trial that he probably did this (the placing of all 3 in the same room and telling them to get their stories together).

Nowhere is there a report by Sgt. Harris of his use of Mr. McDonel as a police agent in this regard. Had the defendant had this information, he could have impeached Sgt. Harris.

The next day (October 10, 1975), Ricky Rimmer was arrested on murder charges based on the concocted statements of Jordan, McDonel and Smith. At trial, Jordan did not testify and his statement was read to the jury by Sgt. Harris. McDonel testified at trial, but he denied making a portion of the statement, where it stated that he saw

Rimmer running and shooting at the car lot dealer. McDonel further stated that Sgt. Harris wrote the statement. (TT 200-203.)

Sgt. Leo Haidys testified outside the presence of the jury that Larry Smith called him stating that he could not testify, but that "what he [Smith] told him [Haidys] and what he testified to at the preliminary examination was true."

Larry Smith testified outside the presence of the jury. Smith *denied* that he told Sgt. Haidys that he did not want to testify. Smith testified that he told Sgt. Haidys that he had no way down to the courthouse. (TT 348-9.)

Smith further testified that the police officers in the case had told him that they had evidence that Jordan and Rimmer had killed his brother Frog (Gregory Smith), and that he wanted revenge, and that his preliminary examination testimony and statement were false. (TT 318-22.)

The court, based on Haidys' testimony that Smith told him he did not want to testify, allowed Smith's preliminary examination testimony to be read to the jury. The court also ordered Sgt. Haidys not to talk to Smith again. When Haidys tried to explain that he did nothing wrong, the court informed Sgt. Haidys that he and Sgt. Harris were under a court order not to talk to Mr. Smith again. (TT 365, 366.)

This appears not be the first time where evidence was manipulated by the officers in this case. As stated above, witness Harry Wilkie testified that two detectives came to his home and showed him pictures, and that he did not identify anyone, nor did he recall who the detectives were.

Sgt. Haidys denied that he took photographs to Mr. Wilkie's home days after the crime, nor could he explain who directed that the photographs be shown to Mr. Wilkie at his home. Haidys further testified that that he was the officer in charge of the case

and that everything had to go through him, and that whoever showed Mr. Wilkie the photographs did not do it at his direction. (TT 452-454.)

Sgt. Haidys testified that later Mr. Wilkie attended a corporal line-up and failed to identify anyone positively, but said that Number 4 looks like the guy. (TT 453-454.) It is Mr. Rimmer's position that in light of Sgt. Haidys not knowing who showed Mr. Wilkie the photographs at his home, then the only purpose for this photo op was to place Mr. Rimmer's image before Mr. Wilkie, because at the corporal line-up the effect of being shown the photos at his home raised its head and clinched Mr. Wilkie's timid identification a little further, causing him to say "Number 4 looks like him." At trial, that photographic show-up, coupled with the corporal line-up "Number 4 looks like him," turned a questionable identification into a positive identification. Officer Haidys testified that based upon Mr. Wilkie's corporal line-up -- he released Mr. Rimmer because he did not think it was good enough to identify Mr. Rimmer (TT 453-54.)

The prosecution's hand is stacked with cards the defense lacks. The prosecutor can immunize witnesses and gather information beyond the reach of the defendant. With this power comes the prosecutor's responsibility to use it fairly.

The reliable evidence of a law enforcement officer's misconduct in ***unrelated*** cases is admissible to impeach that officer's credibility, particularly where credibility is the ***central issue*** in the ***case*** and the evidence presented at trial consists of opposing stories presented by the defendant and government agents.

In Giglio v. United States, 405 U.S. 150 (1972), the Supreme Court ***extended*** the prosecution's disclosure obligation to evidence that is useful to the defense in impeaching government witnesses, even if the evidence is not inherently exculpatory. Giglio 405 U.S. at 153.

Impeachment evidence is considered exculpatory for Brady purposes. The Court has not recognized any distinction between evidence that exculpates a defendant and evidence that the defense might have used to impeach the State's witnesses by showing bias and interest. United States v. Bagley, 473 U.S. 667, 676 (1985). Impeachment evidence merits the same constitutional treatment as exculpatory evidence. Giglio, at 154.

In Brady v. Maryland, 373 U.S. 83, 87 (1963) the high court announced a rule, founded on the due process guarantee of the United States Constitution, that requires the prosecution to disclose evidence that is favorable and material to the defense. The court made clear that the failure of the prosecution to disclose to the defense evidence that is favorable to the accused and is material on the issue of either guilty or punishment violates the accused's constitutional right to due process.

Evidence is material under Brady if there is a reasonable probability that, *had* the evidence been disclosed to the defense, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Bagley, 473 U.S. 667, 682 (1985). Impeachment evidence also falls under Brady. Giglio v. United States, 405 U.S. 150 (1972).

There are three elements to a Brady/Giglio violation:

1. The evidence at issue must be favorable to the accused, either because it's exculpatory, or because it's impeaching;
2. That the evidence must have been suppressed by the state, either willfully or inadvertently; and
3. Prejudice must have ensued. Strickler v. Greene, 527 U.S. 263, 281-82 (1999).

Reversal of a conviction is required only upon a showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. Kyles v. Whitley, 514 U.S. 419 at 435 (1995).

Applying the Brady/Giglio standard to the present case, it is abundantly clear that Mr. Rimmer was denied a fair trial under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, in that:

1. Favorable evidence in the present case

The *reliable evidence* of a law enforcement officer's *misconduct in unrelated cases is admissible to impeach that officer's credibility*. United States v. Kiszewski, 877 F2d, 210, 216 (1989): (See Kyles, supra.)

Sgt. James Harris was arrested for assault with intent to murder and was found not guilty by a jury in 1972.

(a) Had defendant Rimmer been informed regarding Harris' arrest on attempted murder charges, he would have been able to impeach Harris on Timothy Jordan's confession; Jordan did not testify at trial. Sgt. Harris was called to the stand and he read Jordan's statement to the jury.

(b) Had defendant Rimmer been so informed, he could have impeached Sgt. Harris on Darrell McDonel's statement at trial, where McDonel denied that he told Sgt. Harris that he saw Mr. Rimmer running with a gun and shooting at the victim.

(c) Again, had Mr. Rimmer been so informed, he could have impeached Sgt. Harris on the use of McDonel as a police agent in the arrest of Timothy Jordan, where Sgt. Harris plotted with Larry Smith and Darrell McDonel to place Jordan in the same room with McDonel and Smith at the police station, to concoct false statements against Mr. Rimmer. In Arizona v. Fulminante, 499 U.S. 279, 296 (1991), the court stated:

> "A confession is like no other evidence. Indeed, 'the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him . . .[T]he admission of a defendant comes from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly confessions have a profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so." Fulminante, at 296.

Sgt. James Harris took the statements from Larry Smith, Timothy Jordan, and Darrell McDonel. At trial, Larry Smith did not testify, however, Sgt. Harris testified that he took the statement from Larry Smith. Timothy Jordan's confession was read to the jury by Sgt. Harris, and Darrell McDonel testified at trial, but denied that he told Sgt. Harris that he saw Mr. Rimmer chasing after the victim and shooting at him. Sgt. Harris testified that McDonel did tell him that Rimmer was chasing after the victim and shooting at him. But as the court in Fulminante stated: "[T]he admission of a defendant comes from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct." Sgt. Harris' reading of Jordan's confession to the jury was too powerful for Mr. Rimmer to overcome because Sgt. Harris commanded the respect of the jurh.

Here, had Mr. Rimmer been informed of Sgt. Harris' prior misconduct, he could have impeached Harris' credibility. The central issue in this case was one of credibility, with opposing stories presented by the defendant and the government agents. Harris' testimony is that the confessions and the statements were made by these witnesses. Therefore, the evidence of Sgt. Harris' past misconduct was favorable to the defense under Brady.

To give the court two clear examples of how Sgt. Harris attempted to mislead the trial court during his testimony, at one point the judge asked Sgt. Harris was he going to testify in the case, to which Harris replied, "No, your Honor, I don't think so." When the

trial judge asked the prosecutor was Harris going to testify, the prosecutor responded, "Yes he is testifying." The judge then ordered Harris to get out of the courtroom and don't come back in the courtroom again. (TT 40.) *In fact, Sgt. Harris arrested two of the co-defendants and took statements from three of the co-defendants*. So how is it that this officer did not know that he was going to testify? The second example is when Harris lied on the witness stand when asked by defense counsel if he knew of any reason why Larry Smith would be biased against defendants Rimmer and Jordan, to which Sgt. Harris responded shamelessly that he did not know of any reason. (TT 530.) In fact, Sgt. Harris and the other detectives told Darrell McDonel and Larry Smith that Rimmer and Jordan were the individuals who had killed Smith's little brother Gregory Smith (Frog), who was also McDonel's best friend. See affidavits, Darrell McDonel (Ex. 1) and Timothy Jordan (Ex. 2).

It must be noted that Sgt. Harris is on the Wayne County Prosecutor's Brady/Giglio list. (See Ex. 7: Wayne County Prosecutor's Office Giglio-Brady list, Dec. 7, 2020.)

In regards to Sgt. Leo Haidys, had defendant Rimmer known of Sgt. Haidys' arrest for felonious assault with a service revolver, and racist comments during the assault, coupled with his suspension from the Detroit Police Department, he could have impeached him on the fact that:

(a) He testified outside the presence of the jury that Larry Smith called him on the morning that he (Smith) was to testify and told him that he could not testify because he didn't want to be labeled as a "rat." Where Larry Smith testified outside the presence of the jury and he *denied* that he told Sgt. Haidys that he did not want to testify. Smith testified that he told Haidys that he had no way to get to the courthouse. Based on

Haidys' testimony outside the presence of the jury, the court ordered that Larry Smith's preliminary examination testimony be read to the jury.

(b) Had he known about Sgt. Haidys' prior misconduct, he could have impeached Sgt. Haidys on the fact that Sgt. Haidys testified that he is the officer in charge of the case and that everything must go through him, but he could not explain how detectives went to identification witness' Harry Wilkie's home and showed him a photographic line-up which included a photograph of Mr. Rimmer, and to this day, no one knows who these detectives were and who ordered them to conduct this line-up. There is no documentation that this occurred, except for the testimony of prosecution's identification witness Harry Wilkie, who testified to the event having transpired. It is Mr. Rimmer's position that this identification evidence was manipulated by Sgt. Haidys so that the re-occurring image of Mr. Rimmer would be in Wilkie's mind, which has proven to be true, because at the line-up, the re-occurring image of Rimmer reared its head when Mr. Wilkie stated that "No. 4 looks like him." The individual that was Number 4 in the line-up was Mr. Rimmer. At trial, Mr. Wilkie's identification went from he could not identify anyone from the photographic procedure at his home to "Number 4 looks like him" at the corporal line-up to positively identifying Mr. Rimmer at trial, while he sat next to defense counsel. Again, this evidence was manipulated so the re-occurring images of Mr. Rimmer would become a positive identification at trial.

Had Mr. Rimmer known about the misconduct of Sgt. Haidys, he could have impeached him with the manipulation of the evidence regarding Larry Smith, and Mr. Wilkie's identification.

When a police officer takes the witness stand before a jury he commands the respect of the jury. Page, at 102. This is so because of the respect given to police officers

by society due to the importance of their duties. When Sgt. Harris testified that he took the statement of Darrell McDonel, he commanded the respect of the jury.

The same applies to Sgt. Haidys, when he testified outside the presence of the jury and convinced the trial judge that Larry Smith told him that he did not want to be labeled a snitch, so he could not testify, causing the judge to believe him over Smith's denial that he made such a statement to Sgt. Haidys.

The only witnesses who testified at Mr. Rimmer's trial were Mr. Wilkie and Mr. McDonel (McDonel denied that he told Harris he saw Rimmer running and shooting at the victim). That was the *only* evidence that came directly from any witnesses.

All of the other evidence came from confessions of co-defendants, none of whom testified (except McDonel). Sgt. Haidys and Harris were the witnesses who testified as to what Jordan and Smith told them. "[T]he admission of a defendant comes from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct." Fulminante at 296. When confessions by co-defendants, which are not testified to by the co-defendants but instead read by the police officer who took the statement, this only bolsters the co-defendant's confession in the eyes of the jury because the confession has been confirmed by someone who "commands the jury's respect." Clearly, the evidence of Sgts. Haidys and Harris was favorable to Defendant Rimmer under Brady/Giglio.

2. Suppression

Under clearly established United States Supreme Court law, suppression by the prosecution, whether purposeful or inadvertent, of evidence favorable to the accused violates due process "where the evidence is material to either guilt or punishment. Kyles v. Whitley, 514 US r19, 432 (1995) (quoting Brady, at 87.)

Due process imposes an “inescapable” duty on the prosecutor to disclose favorable evidence. Brady is not a rule of “technicality,” it is a rule of “Fairness.” Curry v. United States, 658 A.2d 193 (DC 1979).

The evidence of arrests and trials of Sgts. Haidys and Harris was suppressed. The reliable evidence of a law enforcement officer’s misconduct in unrelated cases is admissible to impeach that officer’s credibility, particularly where credibility is the central issue in the case and the evidence presented at trial consists of opposing stories presented by the defendant and government agents.

3. Materiality

Evidence is "material" for Brady purposes "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Strickler v Greene, 527 U.S. 263, 280, (1999), quoting United States v. Bagley, 473 U.S. 667, 682. Meeting this standard does not require a demonstration that disclosure of the suppressed evidence would more likely than not have resulted in a different outcome. Kyles at 434. Moreover, a "reasonable probability" may be found "even where the remaining evidence would have been sufficient to convict the petitioner." Strickler, 527 U.S. at 290, accord Kyles at 434-35 ("materiality... is not a sufficiency of the evidence test. A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough to convict"). Rather, "[a] `reasonable probability' of a different result is ... shown when the government's evidentiary suppression `undermines confidence in the outcome of the trial.'" Kyles, at 434 (quoting Bagley, at 678). "Bagley's touchstone of materiality is a `reasonable probability' of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a

different verdict with the [suppressed] evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." Kyles, at 434. In making this determination, the suppressed evidence is considered collectively, rather than item by item. *Id.,* at 436. The government's duty of disclosure under Brady applies equally to exculpatory and impeaching evidence, Bagley at 676, (evidence undermining the credibility of a state's witness is "evidence favorable to an accused, ... so that, if disclosed and used effectively, it may make the difference between conviction and acquittal" (internal quotation marks and citation omitted)), and exists whether or not a specific request for disclosure has been made by the accused. United States v. Agurs, 427 U.S. 97, 107, (1976). The duty of disclosure further "encompasses evidence `known only to police investigators and not to the prosecutor.'" Strickler, at 280-81, quoting Kyles, at 438 ("The Supreme Court has made abundantly clear ... that the prosecutor's duty to disclose evidence favorable to the accused extends to information known only to the police" (citing Kyles, at 438.) The prosecution's duty under *Brady* is a continuing one that extends through habeas proceedings. Ritchie 480 US at 60 (1987).

The misconduct of Sgts. Harris and Haidys was material to Mr. Rimmer's case and the failure to allow Mr. Rimmer access to this information effectively took away from the jury's consideration of critical impeachment evidence of two prosecution witnesses.

Mr. Rimmer's case was more than a credibility contest. This was a case where two seasoned police officers manufactured evidence, imputed said evidence to three witnesses (Smith, Jordan, McDonel) who denied making the confession/statements,

and did not testify at trial. Sgts. Harris and Haidys testified to the truth of this manufactured evidence as having come from Smith, Jordan and McDonel. The only other evidence submitted by the prosecution at Mr. Rimmer's trial came from Mr. Wilkie, who never positively identified Mr. Rimmer. His tentative identification came from the suggestive photo line-up (which to this day no one knows who conducted it) where he failed to pick Mr. Rimmer, to a corporal line-up, where he said number "4" looks like him, to trial where he said Mr. Rimmer looks like him. It is clear that Mr. Wilkie's tentative identification came from his reoccurring viewing of Mr. Rimmer.

Therefore, with all due respect, the manufactured identification of Mr. Rimmer by Wilkie cannot support to weight placed upon it by the state.

In short, the only witnesses to testify against Mr. Rimmer were Sgts. Harris and Haidys. They were the prosecution's only witnesses.

Could the People of Michigan feel confident in taking Mr. Rimmer's life when the only thread on which his conviction hangs is the word of two policemen with a record of dishonesty and disrespect for the law?

RELIEF REQUESTED

WHEREFORE, for the reasons stated, Defendant Ricky Rimmer respectfully requests that this Honorable Court grant the following relief:

a) Order the Wayne County Prosecutor to respond to the allegations contained in Defendant's motion and brief in support;

b) Conduct an evidentiary hearing regarding defendant's allegations contained in this motion;

c) Following review of Defendant's claims, reverse Defendant Rimmer's conviction and order a new trial.

Respectfully submitted,

_____

Ricky Rimmer, #133464
Defendant in pro per
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811-974

_____
Date

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

VS.

HON. BRUCE U. MORROW

RICKY RIMMER,

DEFENDANT.
_____/

Wayne County Prosecutor Kym Worthy
1441 St Antoine
Detroit, MI 48226
(313) 224-5777

Ricky Rimmer, #133464
Defendant in pro per
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811-974
_____/

DEFENDANT'S EXHIBITS

INDEX TO EXHIBITS

STATE OF MICHIGAN

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

AFFIDAVIT OF DARRELL MCDONEL

I, Darrell McDonel, first being duly sworn, deposes and says the following:

1. That on or about October 9, 1975, I received a telephone call from Larry Smith, requesting that I come down to the Detroit Police Headquarters (1300 Beaubien).

2. That upon my arrival I believe that I was informed to go to the 5th Floor, where I was met by Sgt. James Harris and Larry Smith. I was then informed by Smith and Sgt. Harris that Ricky Rimmer and Timothy Jordan had killed my best friend Gregory Smith (Frog), who was Larry Smith's little brother.

3. That Sgt. Harris stated to me that he wanted me to help him arrest Rimmer and Jordan.

4. Sgt. Harris told me to call Jordan and tell him that I had a "lick up" (meaning a robbery) and that I was coming to pick him up.

5. That I agreed to set Jordan up for the police based on what Larry Smith and Sgt. Harris had told me regarding his involvement in the death of my best friend.

6. That I did go to pick Jordan up. Upon arrival, Jordan came out of the house, and the police jumped out of their cars. Jordan tried to run but was caught by the police.

7. That later that evening, myself, Larry Smith, Timothy Jordan, and Sgt. James Harris were in a room together and Sgt. Harris told us to get our stories together on Ricky Rimmer because Rimmer was the person he wanted us to say was the one who shot the car salesman.

8. That myself, Larry Smith and Timothy Jordan had conversations in that room at police headquarters, during which we agreed to say that Ricky Rimmer killed the car salesman.

9. That Sgt. Harris took a statement from me. Some of the details I did make in my statement to Sgt. Harris, but I did not tell Sgt. Harris that I saw Ricky Rimmer run past Jordan stating that "he got the money," and chase the salesman while shooting, and that when the man fell to the ground, Rimmer took money from his pocket.

10. That most of my statement to Sgt. Harris was written by Harris and he told me to sign it, which I did.

11. That most of the contents of that statement were Sgt. Harris' thoughts and ideas. I agreed to it because I had been told by Sgt. Harris and Larry Smith that Ricky Rimmer killed my best friend.

12. That I have had a relationship with the Smith family for years. At the time that Gregory Smith (Frog) got killed, I was 16 years old. I had been dating Gregory Smith's sister, who I had a daughter by in 1982, who is now 36.

13. That I did not see Ricky Rimmer shoot and rob the car salesman on August 7, 1975, nor was Ricky Rimmer present during the planning of the robbery.

14. That my testimony during the trial of Ricky Rimmer was based on the false statement that Sgt. Harris submitted to the court, which was in his words and which I

agreed to in order to get back at the person whom I was told was responsible for killing my best friend.

_____
Darrell McDonel

Subscribed and sworn to before me this _____
day of August, 2021.

_____
NOTARY PUBLIC

My Commission expires:_____

STATE OF MICHIGAN

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

AFFIDAVIT OF TIMOTHY JORDAN

I, Timothy Jordan, first being duly sworn, deposes and says the following:

1. On or about October 9, 1975, I was arrested in the area of Van Dyke and Marion Streets in the City of Detroit, along with Darrell McDonel.

2. That I had received a telephone call from McDonel telling me that he had a robbery set up and asking if I wanted to get in on it. I told him that I did. McDonel told me that he was on his way to pick me up.

3. That when I came out of the house and started walking with McDonel, the police jumped out of cars, and I ran and tossed a gun, and was arrested.

4. That I was taken to 1300 Beaubien on the 5th floor. There, I was placed in a room by Sgt. James Harris where Larry Smith and Darrell McDonel were. Sgt. Harris told us to go ahead and get our stories together. Sgt. Harris then said that he knew that myself and Ricky Rimmer had killed Frog (Gregory Smith), but that the concern at this time was to arrest Rimmer for the murder at the car lot.

5. At this point, Larry Smith said that he wanted to get back at Rimmer and that we needed to get our statements together saying the Rimmer killed the car salesman.

6. That I agreed to make a statement saying that Ricky Rimmer was involved in the murder at the car lot.

7. Although I did tell Sgt. James Harris that Rimmer was involved in the planning of the robbery, and that he was present during the robbery, I said this because I was told by Sgt. Harris that he needed me to place Rimmer at the robbery, and because I was sitting in the room with Larry Smith and Darrell McDonel, who were also going to say the same thing.

8. At no time during my interview with Sgt. James Harris did I tell him that I saw Ricky Rimmer chasing the car salesman while shooting at him.

9. Ricky Rimmer was not present during the robbery of the car salesman.

_____
Timothy Jordan

Subscribed and sworn to before me this _____
day of August, 2021.

_____
NOTARY PUBLIC

My Commission expires:_____

Black Youth Says Officer Beat Him

BY TOM DE LISLE
Free Press Staff Writer

MASON—A Negro youth identified Detroit Patrolman Leo T. Haidys Jr. in court here Thursday as one of five white men who beat him during a fight between Negro youths and off-duty policemen at the Veterans Memorial Building last Nov. 1.

The youth, James S. Evans III, said Haidys earlier had confronted him with a drawn pistol.

The testimony came at the opening day of the felonious assault trial of Haidys, 34. He is one of nine Detroit policemen accused in the incident which has contributed to widespread concern about racial attitudes in the Detroit Police Department. Haidys is accused of beating Evans.

Haidys

Another policeman, Richard Stinson, also 34, faces trial on assault and battery charges in the incident. Seven officers have been disciplined by a police trial board.

THE TRIAL is being heard before an all-white jury of six men and eight women in this Ingham County seat. It was moved from Recorder's Court in Detroit at the request of defense attorney Norman Lippitt, chief counsel for the Detroit Police Officers Association (DPOA).

Lippitt argued that Haidys could not receive a fair trial in Detroit because of publicity in the case.

If convicted, Haidys faces a maximum sentence of four years in prison.

Circuit Judge John T. Letts of Grand Rapids' Kent County was picked to hear the trial by State Supreme Court Chief Justice Thomas E. Brennan. Letts is a Negro.

Haidys is an ex-football tackle who played on the 1955 MSU Rose Bowl championship team.

Lippitt, who has said he will prove it was not Haidys who beat Evans, brought out inconsistencies in Evans' testimony during cross-examination.

Evans, the prosecution's chief witness, told of being beaten after he and six friends went to the Veterans Memorial to attend a church dance on the sixth floor. The church dance was held the same night as a party given by the DPOA Wives Association on a lower floor in the building.

Evans said his group arrived at the building about 11:30 p.m. to learn the church dance lasted only another half hour. He said he and his friends decided not to go to the dance.

Evans said he and four companions—including a girl—left the building and went to their car. He said two other youths went to the basement of the building to see if the cafeteria was open.

AS THE FOUR waited by the car, Evans said, he saw their two friends being pushed out the building door by some white men.

The four rushed to the door and as he attempted to enter the building, Evans said, he was pushed back by a man

Turn to Page 6A, Column 1

Details

Roman Gribbs

Black Youth Says Officer Beat Him

Continued from Page 3A

who said: "Get out, nigger, get out."

Evans told of the youths scuffling with the men. He said the men did not at any time identify themselves as police officers and that they appeared "intoxicated."

While they were scuffling, Evans said, one of the men, whom he identified as Haidys, came out of the building with a drawn pistol "waving it around."

Evans said when he saw the gun he ran back to the car where about four men began chasing him and other youths around the vehicle. Evans identified Haidys as the man with the gun among those chasing him.

Evans testified he ran toward the river and was cornered near a fence. He said he heard two shots fired during the chase but did not know where they came from.

After he was cornered, Evans said, a man with a gun told him: "Make one move and I'll kill you."

The youth said five more men ran up and "started kicking me and worked me over." He identified Haidys as one of the men who beat him.

One man, whom he could not identify, struck him in the face with a long-barreled gun, Evans said. He said he was knocked down and "I played like I had passed out."

WHILE HE was lying on the ground, Evans said, Haidys knelt on his back, put his hands on Evans' ribs and said: "If I wanted to, I could pull them (the ribs) out."

The men left him and he joined companions and crossed nearby Jefferson. Shortly afterward, they hailed a passing police car which took him to Detroit General Hospital, where he was examined and released.

Lippitt is the same lawyer who successfully defended Detroit policeman Ronald August against a first-degree murder charge in the Algiers Motel trial held earlier this year in this same courtroom.

He brought out repeated conflicts in testimony Evans gave Thursday with what he had given previously in court and police statements. Almost all dealt with misidentification of Haidys.

When pressed to explain the discrepancies, Evans replied: "I don't remember," or "I'm not sure."

BEFORE THE trial opened at 10 a.m., Lippitt received permission to examine Detective Inspector William Owen, head of the Citizens Complaint Bureau, in the absence of a jury.

Owen had supervised the showing of photographs of all Detroit police personnel to Evans in an effort to identify the men involved in the incident.

Owen said Evans failed to make any positive identifications but picked four men who looked "something like" those he said were involved.

Owen said Haidys was not among those picked and none of the four were at the scene. One of those picked by Evans was a photograph of Owen himself.

Lippitt also brought out that Evans did not require medical treatment — either at Detroit General or from a private physician—of his injuries.

He argued Evans' testimony was prejudiced because Evans' father, James Evans II, has brought a civil damage suit for alleged permanent injuries to his son.

Judge Letts reprimanded Lippitt at this point and the defense attorney asked the jury be dismissed while the point was argued.

A motion for a mistrail was rejected by Letts. The judge said he would rule on the admissability of Lippitt's charge of prejudice over the weekend.

The trial was adjourned until 10 a.m. Monday.

VETERANS' MEMORIAL INCIDENT November 1, 1968

Detroit Under Fire: Police Violence, Crime Politics, and the Struggle for Racial Justice in the Civil Rights Era · Veterans Memorial Incident · Omeka Beta Service (umich.edu)

EXCERPT: The DPD did not initially arrest any of the white officers despite multiple victims filing formal complaints effectively accusing them of felony assault, attempted murder, and assorted other crimes. And not surprisingly, the "Blue Curtain" held strong and none of the officers present filed reports or later testified against the large number of policemen who had broken multiple felony laws that night. **But under sustained pressure, DPD Commissioner Johannes Spreen did suspend nine of the officers involved, and he authorized a police trial board investigation led by Superintendent John Nichols.** This was an atypical move for Commissioner Spreen and represented the only significant specific action, beyond rhetoric and promises, that he took against police brutality during his year-and-a-half in charge. The commissioner only suspended a fraction of the officers actually involved, although in fairness it was difficult for investigators to identify all of the individual off-duty officers who took part that night, especially because of the police code of silence. It is also relevant that the African American youth victims were from "prominent families," as the Detroit Free Press observed.

The DPD trial board found four officers guilty of violating departmental rules and regulations. The trial did not consider whether any were guilty of physical assault or unauthorized use of service weapons, for drunkenly firing guns at unarmed youth on a downtown plaza. Patrolman Patrick Cooney, Jr., was fired for "mistreating" a citizen, Sergeants Gerald Biscup and Thomas Myers were temporarily demoted to patrolman for submitting improper reports, and Patrolman James Johnston received a brief suspension without pay. Civil rights and anti-police brutality groups criticized the minimal punishments and argued that the mayor's office had an incentive to downplay what really happened because the same city attorneys who argued the trial board case against the officers had responsibility to defend them against civil lawsuits.

Two officers referred for prosecution

The DPD also referred **Patrolmen Richard Stinson and Leo Haidys, Jr.,** for prosecution on criminal assault charges, an almost unheard of development. The trials of Stinson and Haidys were moved to a small rural town south of Lansing because DPOA union lawyers argued that the "publicity," meaning black jurors in Detroit, would not give them a fair hearing. A white jury acquitted Haidys, accused of smashing Jimmy Evans in the face with his revolver. Multiple police officers testified that Evans and the other black youth had attacked them, unprovoked.

After this, the Wayne County prosecutor dropped the charges against Stinson, stating that the teenagers could not reliably identify which specific off-duty policemen allegedly had assaulted them. Carl Parsell, the head of the Detroit Police Officers Association union, pushed a conspiracy narrative after the Veteran's Memorial Incident. He blamed the African American youth for the attack, falling back on a historically racist trope by claiming that officers were simply defending their wives from "obscene gestures and remarks" by the black teenagers.

Parsell said that "any man, when provoked, would have done what the men did." He also said Patrolman Stinson "politely" asked the black youth to leave because they were bothering people, and then was assaulted unprovoked. The DPD's own investigation repudiated these DPOA lies and found that "no policeman or wife has come forward with first-person accounts of harassment." Parsell then accused the DPD of suppressing evidence to achieve findings of guilt because of black political pressure and floated the absurd claim that the black youth had exercised "silent intimidations" on the white women.

After the verdicts, the DPOA lawyer called it "the greatest injustice ever to come out of a trial board hearing" and said the white officers had been "scapegoats" to satisfy the outcry in the black community. The four officers found guilty by police trial board The results of the police trial board were in reality quite modest, given that between one and two dozen police officers had committed felony assault and several had committed attempted murder of unarmed teenagers.

But still, the verdicts against four officers, even for minor infractions, were groundbreaking given that the DPD almost always covered up and justified incidents of brutality and misconduct. It is very likely that the main reason for this divergent outcome was that the officers were off duty and inebriated when they brutalized African American youth, rather than doing so while on patrol in the streets, where the DPD and the Cavanagh administration always upheld their discretionary authority. The indiscipline shown by off-duty officers, and the terrible media coverage that resulted, came at the very moment that the DPD was launching a public relations campaign to change its image. DPD advocates of police professionalism and enhanced police-community relations could not simply ignore such egregious misconduct, although they generally categorized what happened as a violation of department rules rather than as crimes. After the trial board hearings, Commissioner Spreen announced the punishments and called the actions of the guilty officers "unprofessional, uncalled for, and inexcusable."

3 STRESS Men to Be Tried In Apartment Shoot-Out

BY JUDY DIEBOLT
Free Press Staff Writer

Three Detroit STRESS policemen were ordered Monday to stand trial for their role in the March 9 apartment shoot-out with Wayne County deputy sheriffs.

Recorder's Court Judge John R. Murphy bound Patrolmen Virgil A. Starkey, 25; Ronald H. Martin, 38, and James R. Harris, 26, over for trial on charges of assault with intent to murder. The judge continued bond of $2,000 on each of them.

The policemen are charged with the critical wounding of Deputy James Jenkins, who was shot early the morning of March 9 at 3210 Rochester where he, four other deputies and a civilian were playing poker.

The shoot-out left Deputy Henry Henderson dead and two other deputies, Aaron Vincent and Henry Duvall, wounded.

Jenkins remains in Detroit General Hospital in serious condition and unable to talk.

DURING THE four days of the hearing, Deputy Duvall testified that an unidentified intruder fired the first shots in the apartment.

But on Monday two Detroit policemen and a sheriff's officer testified that hours after the incident Duvall told them that Deputy Jenkins fired the first shots.

Detective Sgt. Michael Babiuk, a Detroit homicide officer who interviewed Duvall at Detroit General Hospital, said Duvall told him that Jenkins had spotted an extended arm holding a gun through the partially opened apartment door and started firing immediately.

Corroborating Babiuk's testimony were Detroit Patrolman John Ricci and Sgt. Raymond Megee of the sheriff's office, who were present when Duvall made the statement.

The courtroom was packed Monday for Murphy's decision, but the rows of spectators, many of them off-duty policemen, did not include any Wayne County sheriff's deputies.

Sheriff William Lucas said Monday that he ordered all deputies to stay away from the hearing because he had received rumors that there would be another confrontation between STRESS officers and deputies — this one in the courtroom.

MURDER & R.A (2 ARRESTS)

PLACE OF OCCURRENCE: [X] ON STREET: VAN DYKE AND BADGER

CENSUS TRACT: 6650

POLICE AREA: 15-10

NAME AND TYPE OF BUSINESS:

TIME: 9:00 P.M.

AM [ ] PM [X] UNKNOWN [ ]

TYPE OF BLDG (APT., HOTEL, PRIVATE RESIDENCE - SINGLE FAMILY, ETC.):

DATE: 10-9-75

DAY OF WEEK: THURS.

PERSON REPORTING OFFENSE AGE SEX RACE: SGT. JAMES HARRIS,

TITLE: HOMICIDE SQUAD SEVEN

ADDRESS:

TELEPHONE:

COMPLAINANT'S NAME: JOSEPH KRATZ

ADDRESS: DECEASED

PHONE BUS / RES

AGE SEX RACE: 49 M W

RECEIVED BY OFFICER: Warren Harris

TIME: 7:00 P.M. DATE: 10-9-75

VICTIM AND PERPETRATOR ARE: [ ] RELATED [ ] ACQUAINTED [ ] STRANGERS [X] RELATIONSHIP UNKNOWN

METHOD OF ENTRY: [X] UNKNOWN

METHOD OF ESCAPE: [X] UNKNOWN

DEADLY WEAPON: [ ] UNKNOWN .38 cal. B.S.R.

PERPETRATORS: [ ] STATE NO. / MARK X IF UNKNOWN: 2

DESCRIBE: [ ] MALE [ ] FEMALE [ ] UNKNOWN

[ ] JUVENILE [ ] ADULT [ ] UNKNOWN

[ ] WHITE [ ] NEGRO [ ] OTHER [ ] UNKNOWN

TOTAL VALUE: $

[ ] COMPLAINANT AVAILABLE ANYTIME [ ] OR AT

OTHER UNIT NOTIFIED:

NAME OF PERSON NOTIFIED:

TIME:

DATE:

IMPORTANT: PRIOR TO BODY OF REPORT BELOW, GIVE NAME, AGE, COLOR, ADDRESS, AND CHARGE OF EACH PERSON ARRESTED. IF NONE, CHECK BELOW. GIVE ADDITIONAL DETAILS OF OCCURRENCE, PERSONS, AND PROPERTY NOT INCLUDED ABOVE. IF MORE THAN ONE PERPETRATOR, DESCRIBE BELOW.

[ ] NO ARRESTS #1 Timothy Glynn Jordan B/M/20, [redacted]

#2 [redacted] B/M/16, [redacted]

Info. from Sgt. James Harris, Homicide Squad 7, that the subjects were wanted for R.A.'s and murders.

The writers, accompanied by Sgt. James Harris, went to the location of VanDyke and Marion. At that location they obs. the subjects walking on Van Dyke. The officers stopped the subjects at Van Dyke and Badger. #1 reached under his coat to his waist. The writers announced that they were police officers, and the #1 subject turned and ran N. on Van Dyke. The officers chased the subject, and in a vacant field, at VanDyke and Marion, Sgt. Warren Harris obs. the #1 subject throw an object to the ground. He continued running, and was apprehended in the alley N. of that location.

The writers searched the area where he disguarded the object, and P.O. McKenzie found a loaded .38 cal. B.S.R. on the ground. Both subjects were arrested and conveyed to Homicide, Squad 7.

E.T. #357576 - one Rossi .38 cal. B.S.R. 3" bar. ser. # 207913.
E.T. #3 57577 - one ladies stocking, cut in the fashion of a mask, found on the subject #1, by Sgt. James Harris.

SIGNATURE OF OFFICER OR DETECTIVE REPORTING: Sgt. Warren Harris and Crew

NAME: [illegible] 3-461

PRECINCT: H.B. Surv. Unit

ASSIGNMENT:

NAMES OF OTHER OFFICERS INVOLVED: BADGE NO. PRECINCT

NAMES: BADGE NO. PRECINCT

OFFICE GIGLIO-BRADY LIST

First Name	Last Name	Agency	Reason
Miguel	Agulara	Separated from DPD	False Statement
Richard	Billingslea	Separated from DPD	Obstruction of Justice
Naim	Brown	Separated from DPD	Bribery
Anthony	Careathers	Separated from DPD	Fed. Conviction, Extortion
Bradley	Clark	Separated from DPD	False Statement
Michael	Collins	Separated from DPD	Fraudulent Activity
Earl	Crutchfield	DPD	False Statement
Michael	Dailey	Separated from DPD	Fraudulent Activity
Deonne	Dotson	Separated from DPD	Fed. Conviction, Extortion
Kevin	Dowe	Separated from WCSD	Embezzlement
Lashaundra	Ferguson	Separated from DPD	Fraudulent Activity
James	Fontana	Separated from Lincoln Park	Untruthfulness
Steven	Fultz	Separated from DPD	False Statement
Joi	Gaines	Separated from DPD	False Statement
Michael	Garrison	Separated from DPD	False Statement
Diamond	Greenwood	Separated from DPD	Obstruction of Justice
David	Hansberry	Separated from DPD	Fed. Conviction, Extortion
James	Harris	Separated from DPD	Fed. Conviction, Consp. To Distribute Cocaine
Robbin	Harris	Separated from WCSD	Larceny
Roy	Harris	Separated from DPD	False Statement
Nevin	Hughes	Separated from DPD	False Statement
Tyrone	Kemp	Separated from DPD	Fraudulent Activity
Arthur	Leavells	Separated from DPD	Fed. Conviction, Consp. To Distribute Cocaine
William	Little	Separated from DPD	False Statement
Michael	Lynch	Separated from Harper Woods	Larceny
Charles	Lynem	DPD	Dishonesty and False Statements
Jamil	Martin	Separated from DPD	Fed. Conviction, Extortion
Amy	Matelic	Separated from DPD	False Statement
Rochelle	Mayberry	Separated from DPD	False Statement
Keith	McCloud	Separated from DPD	Fed. Conviction, Consp. Wire and Bank Fraud
John	McKee	Separated from DPD	False Statement

William	Melendez	Separated from Inkster	False Statement
Michael	Merritt	Separated from DPD	Larceny
Michael	Mosley	Separated from DPD	Fed. Conviction, Bribery
Michael	Pacteles	Separated from DPD	False Statement
Frederick	Person	Separated from DPD	False Statement
Sheila	Reed	Separated from DPD	Theft and Dishonesty
William	Rice	Separated from DPD	Fraud & False Statement
James	Robertson	Separated from DPD	Fed. Conviction, Extortion
Harold	Rochon	Separated from DPD	Misconduct in Office
Michael	Russel	Separated from DPD	False Statement
Chancellor	Searcy	Separated from DPD	Dishonesty and False Statements
Phillip	Smith	Separated from Lincoln Park	Untruthfulness
Christopher	Staton	Separated from DPD	Fed. Conviction, Consp. Distribute CNSB
James	Tolbert	Separated from DPD	False Statement
Marty	Tutt	Separated from DPD	Fed. Conviction, Extortion
Alex	Vinson	Separated from DPD	Larceny
Bryan	Watson	Separated from DPD	Fed. Conviction, Conspiracy Extortion
Myron	Weathers	Sep. from Highland Park & DPD	Fraudulent Activity
Lamar	Williams	Separated from DPD	False Statement
Charles	Wills	Separated from DPD	Fed. Conviction, Extortion

Register of Actions

Case No. 75-007704-01-FC

Related Case Information

Related Cases
75007704-02 (Co Defendant)

Party Information

		Attorneys
Defendant	**Rimmer, Ricky**	
Plaintiff	**State of Michigan**	**Corinna Kantz** (734) 269-9881(W)

Charge Information

Charges: Rimmer, Ricky	**Statute**	**Level**	**Date**
1. Homicide - Murder First Degree - Premeditated	750316-A	.	10/10/1975
2. Robbery - Armed	750529	.	10/10/1975

Events & Orders of the Court

DISPOSITIONS

07/25/1995 **Disposition** (Judicial Officer: Shamo, M John)
1. Homicide - Murder First Degree - Premeditated
Dismissed
2. Robbery - Armed
Dismissed

OTHER EVENTS AND HEARINGS

03/21/1996 **Motion For Relief From Judgment**
03/21/1996 **Filed**
02/24/1999 **Motion For Relief From Judgment**
02/24/1999 **Denied - Order Signed and Filed**
08/21/2000 **Application for Leave to File a Delayed Appeal (Circuit)**
08/21/2000 **Denied - Order Signed and Filed**
07/30/2012 **Motion For Relief From Judgment**
07/30/2012 **Filed**
10/17/2012 **Order Denying Motion for Relief from Judgment - S/F** (Judicial Officer: Hathaway, Michael M.)
11/02/2012 *CANCELED* **Post Conviction** (9:00 AM) (Judicial Officer Hathaway, Michael M.)
Case Disposed/Order Previously Entered
11/05/2012 **Filed**
11/30/2012 **Motion To Reconsider**
11/30/2012 **Denied - Order Signed and Filed** (Judicial Officer: Hathaway, Michael M.)
03/13/2013 **Application For Leave To Appeal (Circuit)**
12/10/2020 **Motion**

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

VS.

HON. BRUCE MORROW

RICKY RIMMER,

DEFENDANT.

_____/

Wayne County Prosecutor Kym Worthy
1441 St Antoine
Detroit, MI 48226
(313) 224-5777

Ricky Rimmer, #133464
Defendant in pro per
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811-974
_____/

REQUEST FOR COURT TO TAKE JUDICIAL NOTICE OF DEFENDANT'S EXHIBITS PURSUANT TO MRE 201(a)(b)

Now comes defendant Ricky Rimmer, *in pro per,* and moves this honorable court to grant the within request pursuant to MRE 201 (a)(b) and states as follows:

1. Mr. Rimmer requests that this honorable court take judicial notice of the exhibits listed below.

(a) Exhibit 3, Detroit Free Press article of October 3, 1969;

(b) Exhibit 4, Detroit Under Fire article of November 1, 1968;

(c) Exhibit 5, Detroit Free Press article of April 4, 1972.

Mr. Rimmer submits that the three exhibits listed above meet the requirements of MRE 201(b), the documents are not subject to dispute, because they are known within the court's jurisdiction.

Respectfully submitted,

_____

Ricky Rimmer, #133464
Defendant in pro per
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811-974

Date: _____

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

VS.

HON. BRUCE U. MORROW

RICKY RIMMER,

DEFENDANT.
_____/

Wayne County Prosecutor Kym Worthy
1441 St Antoine
Detroit, MI 48226
(313) 224-5777

Ricky Rimmer, #133464
Defendant in pro per
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811-974
_____/

CERTIFICATE OF SERVICE

I, Ricky Rimmer, state that on _____, 2021, I served copies of the following:

1	-	Copy of:	**MOTION FOR NEW TRIAL PURSUANT TO MCL 770.1/SUCCESSIVE MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO MCR 6.502(G)(2);**
1	-	Copy of:	**BRIEF IN SUPPORT;**
1	-	Copy of:	**MOTION FOR EVIDENTIARY HEARING;**
1	-	Copy of:	**DEFENDANT'S EXHIBITS;**
1	-	Copy of:	**CERTIFICATE OF SERVICE;**
1	-	Copy of:	**REQUEST FOR COURT TO TAKE JUDICIAL NOTICE OF DEFENDANT'S EXHIBITS PURSUANT TO MRE 201 (a)(b)**

UPON: **Wayne County Prosecutor Kym Worthy**
1441 St Antoine
Detroit, MI 48226
(313) 224-5777

By placing same in the United States mail at Carson City, Michigan.

_____

Ricky Rimmer, #133464
Defendant in pro per
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811-974

DATE: _____