

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
CRIMINAL DIVISION**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

vs.

Case No. 04-012890-01-FC
Hon. Timothy M. Kenny

THELONIOUS DESHANE-EAR SEARCY,

Defendant-Appellant.

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**DEFENDANT'S POST-EVIDENTIARY HEARING SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT**

By and through counsel, Defendant Thelonious Searcy submits the instant Post-Evidentiary Hearing Supplement Brief in Support of Motion for Relief from Judgment. For the reasons set forth herein, Mr. Searcy requests that the Court grant him a new trial pursuant to MCL § 770.1 and MCR 6.508.

I. Background

In May 2005, Defendant was convicted in a trial by jury for the first-degree murder of Jamal Segars in violation of MCL § 750.316, assault with intent to murder in violation of MCL § 750.83, and felony firearm in violation of MCL § 750.227b. Defendant was sentenced to life in prison without the possibility of parole.

At trial, the prosecution proceeded on the theory that Searcy actually intended to murder DeAnthony Witcher, but mistakenly murdered Segars instead. The prosecution argued that Searcy was upset at Witcher over a nominal debt of \$500 or \$600. To support its theory, the prosecution argued that Witcher and Segars drove identical silver corvettes. The murder took place on September 4, 2004 near Detroit City Airport. Accordingly, the prosecution's entire case and theory rested upon the testimony and credibility of Mr. Witcher as its star witness to support its theory of "murder by mistaken identity."

In 2015 and 2016, Vincent Smothers confessed to the murder of Segars and drafted several affidavits (and letters) attesting to his confession for the murder. As a result of Smothers' confession, Defendant filed a motion for relief from judgment pursuant to MCR 6.502 asserting his entitlement to a new trial based on newly discovered evidence (i.e., Smothers' confession). The Court conducted an evidentiary hearing in this matter during which it heard from numerous witnesses and admitted several exhibits. Defendant now submits that proof of his innocence is overwhelming in light of the evidence and testimony presented during the evidentiary hearing. Accordingly, this Court should grant Searcy's motion for relief and order a new trial under both MCL § 770.1 and MCR 6.508.

Applicable Law

Under MCL § 770.1, the court "may 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." MCR

6.508(D)(3)(b) provides the Court with the authority to grant relief upon a showing of “actual prejudice” which means that:

- (i) in a conviction following a trial, but for the alleged error, the defendant would have had a reasonably likely chance of acquittal; or
- (ii) [omitted]
- (iii) in any case, the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case[.]

MCR 6.508(D)(3)(b)(i), (iii). Defendant asserts that, in light of the testimony and evidence presented, he is entitled to relief under both subsections (i) and (iii) as set forth above. Defendant’s entitlement to relief is premised upon two pieces of newly discovered evidence: (1) the confession of Vincent Smothers; and (2) newly discovered forensic evidence regarding a bullet taken from the body of the murder victim which bullet does not match the murder weapon presented at trial. Each of these subjects are discussed in greater detail below.

I. Smothers’ confession is corroborated by a myriad of documentary and testimonial evidence such that Mr. Searcy was wrongfully convicted and thus suffered “actual prejudice.”

The most convincing and powerful exculpatory evidence of Searcy’s innocence is the confession of Vincent Smothers. Smothers testified, over the advice of his counsel and having waived his Fifth Amendment privilege, that he committed the murder of Jamal Segars. In both his numerous written statements and affidavits as well as his in-court testimony, Smothers’ has provided numerous factual details about the murder and his involvement that are confirmed by both the documentary and testimonial evidence.

1. Smothers identified the victim and provided a motive.

For starters, Smothers knew the date, time, and location of the murder, the identity of the victim (who Smother's says was known as "Q") and perhaps more important, provided a motive for his actions. In particular, Smothers testified that he had been tracking Segars for months trying to rob him because¹, according to Smothers, Segars was a well-known "dope boy" from the Buffalo projects who was getting money "for real" (Defendant's Exhibits A, B and C, Affidavits of Smothers).

At trial, there was no mention of Segars' drug-related activities (indeed Defendant wasn't made aware of such facts until the undersigned counsel brought this to light after investigating the matter). Defendant's Exhibit I confirms that Segars was, in fact, a convicted drug dealer who was sentenced to 121 months in federal prison. Thus, Smothers' statements regarding his knowledge of the victim are confirmed by documentary evidence.

2. Smothers' testimony regarding the bullet trajectory of his shots matches the autopsy report.

Smothers' testimony is further supported by the autopsy report and testimony of Wayne County Medical Examiner Dr. Carl Schmidt. In particular, Smothers described how he and his accomplice Jeffrey Daniels approached Segars' Corvette from the back and began shooting at him with a .40 caliber handgun (Tr. Evid. Hrg 3/19/18, pg. 11-

¹ Officer Corriveau actually provided further corroboration of Smothers' confession in that Corriveau testified that Smothers, a known hitman "was very particular on planning homicides" and that "he took a long time" and "[h]e would stalk his victims." Evid Hrg 3/26/18, pg 10. When he provided that information about Smothers, Corriveau didn't seem to know that Smothers' affidavit was consistent with Corriveau's description. See Defendant's Exhibits A and B (Smothers describing how he had been tracking Segars for "6 months . . . tracking they every move."). Accordingly, Corriveau unwittingly provided further corroborating evidence to support the veracity of Smothers' confession.

12)(“Myself and Jeff, we were walking up on the back of the car, and I noticed that [Segars] saw us in the rear-view mirror, and before he could get a chance to do anything, I fired through his back and then walked around to the [driver’s] side of the car.”). Smother’s written statements/affidavits also detail his foot-pattern approaching Segars vehicle and the direction of his fatal shots (Defendant’s Exhibit A, B, and C).

Dr. Schmidt’s testimony confirms the accuracy of Smothers’ statements about the bullet trajectory. Dr. Schmidt testified at trial that there were gunshots to the back of Segar’s body, including one shot to the back of the head, and that the trajectory of the other shots were “from left to right.” (Jury Trial Tr, Vol III, pg 158, 162). Schmidt’s testimony provides factual support for Smothers’ detailed confession.

3. Smothers’ provided extensive factual detail of the murder scene.

According to private investigator Scott Lewis, Smothers contacted him via letter in or about July 2016 again confessing his involvement in Segars’ murder. Afterwards, Lewis interviewed Smothers via phone during which Smothers provided a nearly 20-minute detailed confession of the murder (Defendant’s Exhibit D, audio recording). Following Lewis’s interview with Smothers, Lewis sent to Smothers a map of the murder scene and Smothers accurately marked on the map where he shot Segars and also the separate routes that he and Jeffrey Daniels took to get back to Daniels’ car after shooting Segars (Defendant’s Exhibit C).

Smothers’ written statements are also filled with rich detail of the murder scene that would only be known by the killer. For example, Smothers’ describes how, after shooting Segars, an unmarked black “Crown Victoria” police car responded to the scene. Smothers describes how the unmarked police car crashed into a “Burgundy Maranda

[sic]" which caused the airbags to deploy in the police car. Smothers further details how a white officer then got out of the police car and began firing shots. Smothers believed that the driver of the police car may have been injured. Each of these details is supported by other documentary evidence.

For example, a police report written by one of the responding officers, Shawn Stallard, confirms that his police car did, in fact, crash into a burgundy Mercury Marauder while responding to the scene of the murder (Defendant's Exhibit V). At trial, DPD officer Micah Hull, who was riding in the police car, further confirmed that their airbags went off as a result of the crash with the marauder (Jury Trial Vol III, pg 107-11).

Another witness at the scene, Latasha Boatright, provided a written statement in which she also indicated that, after the police car crashed with the burgundy Marauder, she saw the passenger of the police car exit the crashed-vehicle and begin shooting (Defendant's Exhibit U, Boatright statement, pg 1-2). During the preliminary examination, Boatright testified that she saw the police shooting despite the fact that the police were denying that they had fired their weapons (Prelim Hrg Tr 12/21/04, pg 72-73). Another witness at the scene, Kimberly Jeffries, also confirmed that she believed the police officers had fired their weapons. (Prelim Hrg, Tr, pg 26). Thus, despite the officers' denials of discharging their weapons, there are two witnesses who support Smothers' claim that the police did, in fact, fire their weapons.

There is also evidence that may shed light on the reasons why the responding officers denied discharging their weapons. In particular, there are witness statements and other documentary evidence suggesting that the police may have fired their weapons at the burgundy Marauder and may have fatally struck an occupant of that vehicle.

According to a memorandum written by an attorney for the City of Detroit's Legal Department, there was a second shooting fatality at the time of Segars' murder that has, until now, never been disclosed².

Specifically, Ms. Kathy Christian, Assistant Corporate Counsel for the City of Detroit's Law Department, Freedom of Information Section, authored a memorandum to Sgt. William Anderson who served as the Officer-in-Charge of the Segars murder investigation. In the memo, Ms. Christian indicates that, per her telephone conversation with Sgt. Anderson of October 1, 2004, she understood that a police "squad car" was responding to a call at Whithorn and Connor on September 5, 2004, and that police car was then involved in a crash with another vehicle whose driver was "ducking" to avoid gun shots, and further that the man's wife who was in the car was fatally shot (Defendant's Exhibit T). Christian was confirming that there was, at that time, a video recording of the events.

Christian's memo contains several handwritten notes and initials which were identified during the evidentiary hearing by Sgt. Anderson as belonging to Lt. McCalister and Lt. Ventavogel, Evid Hrg, 5/15/18, pg 31 (identification by Sgt Anderson of initials contained on Defendant's Exhibit T). The handwritten notes on the memo indicates that DPD wouldn't release a copy of the video "due to ongoing inv[estigation] per Lt. McCalister." The note is signed by initials "Lt. V." (Defendant's Exhibit T).

² Ms. Christian's memo was recently obtained from the City of Detroit in response to a subpoena sent by the undersigned counsel. It should be noted, however, that the prosecution/litigation file relating to the Searcy case is 'missing' and has been since "probably before" 2009-2010, according to the original prosecutor Patrick Muscat. Evid. Hrg, 5/9/18, pg 25-28. Accordingly, it is impossible to know what documents, if any, are contained within the prosecutor's file relative to Ms. Christian's memo or the facts raised therein.

When asked during the evidentiary hearing about Christian's memo, Sgt. Anderson indicated that he had no recollection of seeing such memo (despite the fact that Christian specifically recounts having a telephone conversation with him on October 1, 2004). Anderson also asserted that Christian's memo doesn't seem to relate to the Segars murder investigation and that while he was there on the night of the murder, he wasn't aware of any second fatality.

The prosecution then offered documents purporting to reflect the murders/homicides in the City of Detroit during the time in question and focused on the fact that there wasn't a second shooting fatality listed on the night of Segars murder. Sgt Anderson admitted however, that the documents presented only show murders in the City of Detroit and do not include murders/homicides that may have been reported in other jurisdictions. Anderson further acknowledged that, according to a police report, the burgundy Marauder, after colliding with the police car, fled the scene (Defendant's Exhibit V).

Accepting at face value the information set forth in the police report that the Marauder fled the scene, the documents offered by the prosecution about murders in the City of Detroit does not rule out the possibility of a second fatality given that the fatality may have been reported in a jurisdiction other than the City of Detroit.

Christian's memo is significant for two reasons. First, it was never produced, or disclosed, so as to allow the defense to investigate the claims raised therein relating to a second fatality. As such, the memo undermines the overall integrity of the investigation as well as the forensic evidence relating to what types of weapons may have been fired at the scene of Segars' murder. Other documentary evidence reflects that there may have

been three different types of weapons; a .40 caliber, a .45 caliber, and a 9mm. See Defendant's Exhibit K.

Given the various discrepancies in the forensic evidence, it appears entirely plausible that there were multiple shooters on the night of Segars' murder, including the police officers who responded to the scene. These undisclosed facts would have cast serious doubt on the jury's verdict, especially given that the jury wanted to know, specifically, what type caliber bullet killed Segars. On this most important question, the prosecution led the court to believe that it was impossible to discern the type of caliber bullet that killed Segars, information that was clearly false and misleading.

Had the jury known that there were possibly three shooters at the scene of the murder, and a second fatality, and that the bullet that struck Segars was a .40 caliber while the gun found at Searcy's apartment was a .45 caliber, it would have, more likely than not, resulted in reasonable doubt and thus an acquittal of the charges against Defendant. This is especially true when these additional facts are viewed in the context of the prosecution's theory at trial that Searcy, alone, was responsible for Segars' death.

Moreover, the fact that there is documentary evidence of a second fatality that, until now, has never been disclosed, gives rise to multiple questions about possible police misconduct including, possibly, to conceal the fact that the police may have caused a second fatality at the scene. There is support for this theory in Boatright's statement in which she indicates that the police, after crashing into the Marauder, were "shooting at the driver." (Defendant's Exhibit U, pg 2).

While Boatright's statement may be subject to some varying interpretation, it wouldn't make sense to infer that the police were "shooting at the driver of the Corvette"

(i.e., Segars). The more logical inference to be drawn from Boatright's statement is that the police began "shooting at the driver" of the Marauder that struck the police car. This inference is further supported by the police report that indicates that the Marauder "struck the [police] crew's veh[icle] head on and then fled loc[ation] [eastbound], (Defendant's Exhibit V).

These facts suggest that the police were unaware of who was involved in the shooting and, after getting struck by the marauder, assumed the Marauder must have been involved in the crime. Plus, after the Marauder struck the police car, it fled the scene and likely further fueled the officers' suspicions about whether the driver and/or occupants of the Marauder were involved in the crime. While ultimately this may be only a theory, there is reasonable support for such theory, and Defendant would have been well within his right to raise these issues at trial to undermine both the police investigation and the prosecution's theory against him.

In other words, if the jury would have heard Smothers' confession, along with the multiple details of the murder scene, including his statements that the police were firing their weapons, then Defendant could have used both Boatright's statements and possibly Christian's memo to provide factual support for Smother's statements.

Equally significant about Christian's memo is the fact that, if there was a second fatality, as indicated in the memo, Defendant, nor anyone else, was investigated or charged with the crime. Certainly the prosecution would have charged Defendant with this second fatality if it believed that there was evidence sufficient to support the charge. The fact that Sgt. Anderson and his investigating officers had reason to believe there was a second fatality and yet did nothing to investigate or recommend charges for same

undermines the prosecution's case against Defendant as the sole shooter. With evidence of multiple shooters and two fatalities, the investigating officers would have been subject to strenuous cross examination which would have severely undercut the prosecution's theory and case against Defendant.

Collectively, this newly discovered evidence would have, more likely than not, changed the outcome of the trial and resulted in a verdict of not-guilty.

4. Smothers' testimony regarding the type of weapon has now been confirmed by newly discovered forensic evidence.

Additionally, the newly discovered forensic evidence relating to the type of bullet removed from Segars' body substantially undermines the jury's verdict. In particular, Defendant offered into evidence a newly discovered DPD evidence report that indicated there was a conflicting evidence tag showing that the same piece of evidence was both a .9 mm shell casing and a .40 caliber bullet fragment. See Defendants' Exhibit K, pg 2. In particular, Defendant's Exhibit K, pg 2 reflects that a 9mm shell casing was recovered from the scene of the murder and logged as evidence tag no. E071916-04³. The prosecution brought to the evidentiary hearing the evidence envelope which was labeled both as a 9 mm shell casing and a .40 caliber bullet fragment.

Given the discrepancy, the Court ordered that the envelope be opened and examined by the Michigan State Police Crime Lab, in the presence of Defendant's forensic firearm expert. Upon further examination, the envelope contained a .40 caliber bullet fragment that was purportedly taken from Segars' body and then received by police

³ This same evidence tag no. E071916-04 was shown at trial as containing a .40 caliber "metal jacket bullet." See Defendant's Exhibit J.

from the Wayne County medical examiner. On its face, this evidence (which had never been produced to the defense nor discussed at trial) is exculpatory to Defendant.

Smothers testified that he shot Segars with a .40 caliber handgun, while his accomplice Jeffrey Daniels had a .45 caliber handgun. According to Smothers, Daniels also fired his weapon, at least once into the air, but Smothers wasn't certain how many additional shots may have been fired by Daniels. Consistent with Smothers' testimony, DPD evidence technicians recovered from the scene of the murder several shell casings including both .40 and .45 caliber casings.

Importantly, however, is the fact that the shell casing recovered at, or near, Segars' Corvette were .40 caliber casings, while the .45 caliber shell casings were collected in the parking lot of the corner store near where the police car and Marauder collided, and from where witnesses (Boatright and Jeffries) indicated the police were firing their weapons. Knowing now that the bullet recovered from Segars' body was a .40 caliber, and the shell casings directly surrounding the Corvette were .40 caliber casings, this evidence further corroborates Smothers' statements about the type of weapon he confessed to using to shoot and kill Segars.

At trial, the prosecution presented evidence of a .45 caliber handgun that was seized from the apartment in which Mr. Searcy was arrested. The prosecution then offered the testimony of its forensic firearms examiner Kevin Reed who testified that the weapon found in the apartment where Searcy was arrested was the weapon that fired the .45 shell casings at the scene of murder. Given that there were, at least, two types of weapons fired at the scene of the murder, the jury sent out a question during its deliberations asking "what type of caliber ... bullet was found in the deceased." Trial

Trans Vol V, May 6, 2005, pg 89, ln 5-13. Clearly, the jury wanted to know whether the caliber bullets taken from Segars' body were .45 calibers because the prosecution offered evidence of a .45 caliber handgun that it tied to Searcy.

In response to the jury's question, this Court advised the jury, "[a]fter speaking with the attorneys," that the bullets that were recovered from the deceased were too deformed to be able to identify what gun it came from **or what caliber it came from.**" *Id*, Trial Tr Vol V, pg 89 (emphasis added). There is no doubt now that the information conveyed to the jury was both incorrect and misleading. The prosecution and the OIC, Sgt. William Anderson, either knew, or should have known, that this key material, exculpatory evidence was purposefully withheld from the jury. When presented with these new facts, Sgt. Anderson had to reluctantly acknowledge that the type of bullet removed from Segars' body (i.e., a .40 caliber) couldn't have come from the weapon introduced at trial and tied to Searcy (i.e., at .45 caliber). Evid. Hrg Tr, 5/15/18, pg 50-51.

Clearly, the investigating officers were given the .40 caliber bullet fragment from the Wayne County medical examiner's office. And to the extent that the prosecution may now argue that the defense had this information about the .40 caliber bullet fragment available to it, the record contradicts such an assertion. In particular, the evidence tag in question was logged as a 9mm shell casing (Defendant's Exhibit K). The same evidence tag was later presented at trial as containing a .40 caliber "metal jacket bullet" (Defendant's Exhibit J). But when the actual evidence envelope was recently opened and examined, it contained a .40 caliber bullet fragment. When asked if he could explain this discrepancy, Mr. Dave Balash, a highly qualified and respected firearm forensic expert,

testified that “[t]here is no possible way you can confuse the two of those.” (Evid Hrg Tr 5/9/18, pg 8).

Mr. Balash further testified that mistaking a 9mm shell case and a .40 caliber bullet fragment would be like “confusing a cherry and a watermelon.” *Id* at 15. Balash explained that “one was from the morgue [the .40 caliber bullet fragment] [and] one would not have come from the morgue [the 9mm shell casing].” *Id* at 15. Balash went on to explain that “[a] bullet [fragment] is normally recovered from an object or from a person” while “you will find [a] fired cartridge case at a crime scene.” *Id* at 16. Sgt. Anderson agreed with Balash’s assertion and testified that, based on the inventory evidence log, Defendant’s Exhibit K, he would have reason to believe that there was a .9mm shell casing that was collected at the scene of the Segars murder (Evid Hrg Tr, 5/15/18, pg 45-46).

When asked about the fact that the evidence envelop contained two tags, one listing a 9mm shell casing and the other listing a .40 caliber bullet fragment, Balash opined that “[t]he only reasonable explanation that I have is they were reading material from one tag that actually was a nine millimeter fired cartridge case, and it got placed on a .40 S&W fired bullet from an autopsy. I suspect they were reading it [9mm shell casing] from somewhere[.]” *Id* at 17-18.

Furthermore, not only is this forensic evidence consistent with Smothers’ statements, but also such evidence would have had a significant impact on the outcome of the trial. The gun that was tied to Searcy was a .45 caliber, whereas the bullet removed from Segars’ body was a .40 caliber. There could be no better example of exculpatory evidence. Not only was this exculpatory evidence withheld from the defense at the time

of trial, but also the jury was incorrectly advised that it was *impossible* to discern the caliber type of bullet found in the deceased. Furthermore, the Court's response to the jury's question must have come directly from the prosecution.

The facts surrounding the conflicting evidence tag also raise serious concerns regarding the accuracy of the police investigation. For example, the DPD evidence report reflects that a 9mm shell casing was found at the scene of the murder. The prosecution offered the testimony of Ms. Patricia Little who attempted to characterize this discrepancy as a typo or data-entry error, perhaps related to the fact that the DPD began using a new evidence tracking system (and intimating that maybe it was incorrectly entered after the implementation of the DPD's system). However, Little admitted that the evidence inventory list, Defendant's Exhibit K, was dated September 16, 2004, and accordingly Little admitted that someone had logged into evidence the .9mm casing as far back as the time of the murder (thus it couldn't have been related to the implementation of a new evidence software system). Evid. Tr. 5/15/18, pg. 14-17.

5. Smothers' confessed to Marzell Black his involvement in the murder of Segars.

Smothers' testimony is further corroborated by other evidence. For instance, Marzell Black testified that he had grown up in Detroit with Smothers and knew him as a friend. Black testified, without hesitation and without any incentive, that Smothers confessed to him years ago to the murder of Segars by Detroit City Airport. According to Black, the murder was, at the time, a big event that was talked about in the community and there was talk that the police had the wrong guy. Evid.Tr. 3/26/18, pg 39 (Black testifying that "later on [the murder] rocked the City that somebody got nabbed for it who actually didn't kill the person.").

Black said Smothers confessed his responsibility for Segars' murder "probably in 2009" while Black and Smothers were codefendants in another case. *Id* at pg 39-40. Black believes his conversation with Smothers took place "in the County" while the two men were "commuting back and forth from court." *Id* at 40. According to Black, Smothers acknowledged that there "was a guy that didn't commit the murder that was in the joint" and that Smothers further said that he "was going to work on trying to free him." *Id.* at 40.

Black further testified that he didn't know Searcy and that the information "wasn't important" to him at the time of Smothers' confession. Black knew Searcy only by the nickname of "Skinny man" and later he crossed paths with Searcy in prison at which time Black told Searcy about Smothers' confession and that he didn't feel any pressure nor was he threatened by anyone to disclose Smothers' statements. *Id.* at 41-42.

Black's testimony also dispels the testimony given by Officer Corriveau who testified that he had an "impression that [Smothers] had been threatened or his family had been threatened" to confess to Segars' murder (Evid Hrg, 3/26/18, pg 8). Despite his "impression" that Smothers had been threatened or coerced into confessing, Corriveau had no evidence whatsoever to support his "impression." He didn't have any written notes or recordings from his conversation with Smothers and admitted that he didn't conduct any investigation whatsoever into whether Smothers had been threatened or coerced. *Id* at 18⁴.

⁴ Corriveau further testified that Smothers orally recanted his confession, which Smothers did not deny. According to Smothers, he did so only because he was told by the investigating officers that his confession to the Segars murder would delay the release of Davontae Sanford who was also wrongfully convicted of several murders for which Smothers had also confessed his involvement (Evid Hrg 3/19/18, Tr. 49-50). In any

Nor did Corriveau conduct any type of investigation into the veracity of Smother's statements regarding the details of the murder scene, the type of weapon used, Smother's purported motive for killing Segars, or any other facts related to Smother's confession. *Id* at 15-19. Rather, Corriveau offered only his unsupported "impression" that Smothers had been coerced or threatened into confessing to Segars' murder. Given all of the corroborating evidence supporting Smothers' statements, including facially exculpatory forensic evidence, the Court should dismiss out-of-hand Corriveau's self-serving "impression" that Smothers was threatened or coerced.

Marzell Black's testimony also dispels the prosecution's half-hearted assertion that Smothers was paid or compensated for confessing to the murder. In particular, the prosecution offered into evidence, over Defendant's objections, an audio recording of Smothers made from jail after Smothers testified at the evidentiary hearing. The prosecution claims, without any foundation or support whatsoever, that this audio recording supports an inference that Smothers was paid off to confess (presumably by Searcy or his family). The Court should flatly reject the prosecution's unfounded assertions.

The audio recording is nearly incoherent. The identity of the other participant is unknown as are the subjects of the conversation. There is absolutely no context whatsoever to the conversation. Indeed, Smothers states in the conversation with the unidentified woman that he doesn't know what or who she's talking about. With scant

event, Smothers never formally recanted his multiple written confessions to the Segars murder, and in fact appeared in Court, waived his Fifth Amendment privilege, and confessed in great detail and explained his prior conversation with Corriveau, among others. The fact that the investigating officers tried to pressure or coerce Smothers to retract his confession to the Segars murder should carry no weight given the overwhelming corroborating circumstances.

details, it is difficult, if not impossible, to infer anything from the conversation, and without laying a proper foundation, the Court should disregard the prosecution's attempt at spin out of thin air an argument that Smothers was paid off for his testimony. Indeed, the prosecution offered absolutely no evidence to support such far reaching assertions. And, perhaps more important, the prosecution's made-up theory of a pay off is also at odds with Corriveau's assertion that Smothers was threatened. So was Smothers threatened or paid off? These are diametrically opposed theories neither of which have any support in the record.

Finally, Marzell Black's testimony dispels both of the prosecution's unsupported theories that Smothers was either paid off or threatened. Black testified that Smothers confessed to him years ago while the two were engaged in idle conversation which would be entirely reasonable given their long-standing friendship. Moreover, Black testified that Smothers' confession to him was really "no big deal" and that he didn't really think much about it at the time. The most important aspect of Black's testimony was that his conversation with Smothers occurred years before Smothers formally confessed to the murder.

II. Newly discovered forensic evidence, that was suppressed by the prosecution at trial, regarding a bullet taken from the victim exculpates the Defendant and supports relief under both MCR 6.508(D)(3)(b)(i) and (iii).

For the same reasons as set forth above, Defendant asserts that he is entitled to relief under MCR 6.508(D)(3)(b)(i). In particular, the prosecution's suppression from the jury of the type of bullet that was removed from Segars' body constitutes an irregularity "so offensive to the maintenance of a sound judicial process that [Defendant's]

conviction should not be allowed to stand regardless of its effect on the outcome of the case.

As revealed herein, the jury sent out a note during its deliberation expressly inquiring into the type of caliber bullet found in Segars' body. The prosecution provided information to this Court that it could not discern the type of caliber bullet, an assertion that has proven to be utterly false in light of the recent re-examination of the evidence. Additionally, the evidence in question was erroneously marked as both a 9mm shell casing and a .40 caliber metal jacket. This discrepancy too was never known to the defense at the time of trial because the evidence inventory log was produced only after trial. But no matter, the prosecution bears full responsibility for providing misleading and inaccurate information to the jury in response to its question which false information no doubt impacted the jury's finding of guilt.

For this reason, Defendant is entitled to relief under MCR 6.508 as well as MCL 770.1. It is not the function of the Court, at this juncture, to weigh the competing evidence and determine culpability as if it were sitting as the fact-finder. Rather, it is the function of the Court to determine whether Defendant was prejudiced by the errors described herein, and whether the outcome of the trial may have been different. The Court should answer this question in the affirmative and grant the Defendant's instant motion for relief from judgment.

WHEREFORE, Defendant requests that the Court grant Defendant's motion for relief from judgment and order forthwith that Defendant be re-tried or that the charges be dismissed.

Respectfully submitted,

LAW OFFICE OF MICHAEL R. DEZSI, PLLC

Dated: June 15, 2018

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PROOF OF SERVICE

The undersigned certifies that on the 15th of June 2018, the foregoing document was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses on pleading via the Court's e-file and serve system.

/s/Michael R. Dezsi