

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

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 76-005890-01-FC
Hon. QIANA D LILLARD

vs.

CHARLES LEWIS,

Defendant.

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**DEFENDANT, CHARLES LEWIS's MOTION TO DISMISS CASE DUE TO
DEFENDANT'S ACTUAL INNOCENCE**

NOW COMES, the above named Defendant Charles Lewis, by and
through himself and moves this Honorable Court to DISMISS this case because
the Defendant is ACTUALLY-INNOCENT for the following reasons:

1. On July 31, 1976 off-duty Detroit Police Officer Dennis Van Fleteren stood in front of Oty's Saloon on Harper talking to his off duty partner Gerald Sypitkowski. While Dennis Van Fleteren was talking to his off duty partner Gerald Sypitkowski, Leslie Nathaniel pulled up next to him in a white Lincoln Mark IV and shot him to death.

2. Leslie Nathaniel pulled away from the vicious murder at a high rate of speed with his lights off.

3. Van Fleteren ran into the street and attempted to get Leslie Nathaniel to pull over. Nathaniel nearly ran him over. As Van Fleteren dove out of the way of the speeding white Lincoln Mark IV, he got the license plate number and relayed that information to the officers that responded to the crime.

4. Four college students double parked in a brown Ford outside of Oty's Saloon were also eye witnesses to Officer Gerald Sypitkowski's murder. Jay Smith testified that he looked in his rear view mirror and saw Leslie Nathaniel pull up to the street light and stop. He also saw Leslie Nathaniel shoot and kill Gerald Sypitkowski. Jay Smith's three passengers, Kim Divine, Gloria Ratachek, and Donald DeMarc all testified that they turned seconds after hearing a shotgun blast and saw the deceased lying in the street. They all saw the white Mark IV speeding away from the murder.

5. William Eichmann testified that he was a Bouncer at Oty's Saloon. He also testified that he was standing outside in front of Oty's Saloon when he heard a shotgun blast and looked in the direction of the blast and saw Gerald

Sypitkowski lying in the street. He also simultaneously saw Leslie Nathaniel pull away from the murder at a high rate of speed with his lights off.

6. Leslie Nathaniel was arrested a few hours after the murder of Officer Sypitkowski and his car a white Lincoln Mark IV was impounded at the Seventh Precinct impound lot.

7. Leslie Nathaniel told homicide detectives that he was on Harper in his white Lincoln Mark IV with his lights off.

8. He also told homicide detectives that he pulled away from the light at a high rate of speed and tried to run down two white males.

9. A few hours after his arrest Leslie Nathaniel was released and his car was destroyed in the Seventh Precinct impound lot. Leslie Nathaniel's release was ordered by Police Commissioner, JOHN NICHOLS. There was no paraffin test done, no ballistics test performed, no arraignment, no preliminary examination or anything else done. He was released because the police commissioner ordered his release. The Police Commissioner ordered Leslie Nathaniel's release because the mob bosses that ordered the hit on Officer Sypitkowski ordered the Commissioner to release Nathaniel.

10. At the time of the murder of Officer Gerald Sypitkowski, Charles Lewis was a seventeen year old guitar player for the band Pure Pleasure.

11. On the night of the murder of off duty police officer, Gerald Swpitkowski, Charles Lewis was on stage at the local 212 with Pure Pleasure. He was mysteriously arrested and charged with the murder of Officer Gerald Sypitkowski.

12. The murder of officer Gerald Sypitkowski was a mob hit that was ordered by the same mob bosses that ordered the murder of Jimmy Hoffa. Leslie Nathaniel was a mob hit man.

13. Homicide detective, Gilbert Hill, testified that he received an anonymous tip that Charles Lewis was involved in the murder of Officer Gerald Sypitkowski. And, that he instructed homicide detectives to arrest fifteen year old Jeffrey Mulligan, sixteen year old Ronald Pettway and sixteen year old Mark Kennedy. The identity of the confidential informant was not disclosed at trial or on record.

14. Fifteen year old Jeffrey Mulligan, sixteen year old Ronald Pettway and sixteen year old Mark Kennedy were arrested and charged with this murder. Here is what Judge Deborah Thomas wrote regarding the three juveniles.

JUDGE DEBORAH THOMAS'S OPINION AUG. 16, 2006. Three juveniles were arrested in connection with the murder of Gerald Sypitkowski, Jeffrey Mulligan (15), Mark Kennedy (16) and Ronald Pettway (16). Two of the juveniles Mark Kennedy and Ronald Pathway made incriminating statements implicating the Defendant Charles Lewis and were released from custody. The record indicates that Jeffrey Mulligan was initially charged with the offense along with the Defendant. However, the charges against Jeffrey Mulligan were later dropped when he agreed to testify against the Defendant. (TT pg. 361-373).

Collectively the three juveniles testified that they met with the Defendant on the night of the murder and the four stole a blue or green Ford Maverick then drove to another location and stole a yellow Ford Grand Torino. The four left with Jeffrey Mulligan and the Defendant in the yellow Grand Torino and Ronald Pettway and Mark Kennedy in the Ford Maverick. The four proceeded to 14181 Eastwood where the Defendant accosted Raymond Cassabon and the Defendant stated "Give me your fuckin money." Mr. Cassabon refused to comply with the Defendant's demands and was shot in the leg. The four juveniles apparently left Eastwood and traveled to Harper and Barrett where the Defendant asked Swpitkowski for his wallet then shot him with a sawed off shotgun. (TT pg. 242-335, 347-397, 414-456).

The third jury was improperly seated on July 5, 1977. There is no transcript of the voir dire. There is no transcript of the names of the jury. There is no transcript of the race or age or occupations of the jury.

Judge Deborah Thomas wrote the following:

ARGUMENT III. In the Defendant's third argument he asserts that the original trial judge Joseph E. Maher directed the jury to find him guilty during his instructions. This is a very complicated issue that has been argued by the Defendant before. This Court believes that this issue is controlled by the law of the case doctrine. However, this Court will still address this issue. Judge Maher gave the jury the following instruction:

“Now you have heard evidence tending to show that the Defendant, Charles Lewis was GUILTY of another shooting in the course of an armed robbery for which he is now on trial here.” (TT pg 666).

The United States Court of Appeals for the Sixth Circuit concluded that the above instruction was harmless error. This Court disagrees. This Court believes that the above instruction was a structural defect which defied analysis by the harmless error standard of review. I would reverse this case based on the above instruction. This Court is of the opinion that any time a judge instructs a jury that the Defendant is GUILTY of any element of the offense, regardless of his motives that it should be deemed reversible error.

The above instruction in this case was especially offensive. Two versions of the deceased death were presented to the jury. The three juveniles testified collectively that Jeffrey Mulligan was driving a stolen yellow Grand Torino, and that Ronald Pettway was a passenger in the front seat and the Defendant was a passenger in the back seat, seated on the passenger's side of the car with a sawed off shotgun. The three also testified that the yellow Grand Torino pulled up to the curb, and further that the deceased was standing at a bus stop when the Defendant requested his wallet then shot him in the head with a sawed off shotgun. What is disturbing is the fact that the jury had to reject the testimony of Dennis Van Fleteren, an eye witness who was also a Detroit Police Officer, and the partner of the deceased, to convict the Defendant. The jury had to also reject the testimony of Jay Smith, who was also an eye witness to the murder. Both Dennis Van Fleteren and Jay Smith testified that the fatal shot that killed the

deceased came from the driver's side of a white Mark IV. The jury had to also reject the testimony of Kim Divine, Gloria Ratachek, Donald DeMarc and William Eichman. The jury had to totally reject the testimony the testimony of the first alleged perpetrator Leslie Nathaniel. Mr. Nathaniel testified that he was driving down Harper with his lights out on the night of the murder. The white Mark IV that was driven by Leslie Nathaniel, it should be noted was destroyed in the Seventh Precinct impound lot.

To convict the jury had to reject the scientific impossibility that the three juveniles' version of the murder presented. To convict the jury had to believe that the deceased was standing at a bus stop when he was shot in the head, and that the force of the fatal shotgun blast blew the deceased from the bus stop into the street. The coroner testified that the deceased was shot at close range with a 12 gauge shotgun that was loaded with double "O" buck shot.

The high hurdles that the jury overcame to convict is clear evidence that the jury was swayed by the judge's instruction. It is the opinion of this Court that the complained of instruction pierced the veil of judicial impartiality. See, *People v Collier*, 168 Mich App 687: 425 N.W.2d 118 (1998).

It is hard to fathom that a jury would summarily dismiss the testimony of a police officer who was also the partner of the deceased in favor of three juveniles. I also have some questions about how four juveniles in two cars could be missed by everyone on the scene of the crime. It is the opinion of this Court that the above instruction by Judge Maher had a devastating effect on the jury.

The excerpt above is from an opinion that was written by the Honorable Deborah Thomas. The Honorable Deborah Thomas concluded that it was scientifically impossible for the Defendant to have committed the crime that he is currently locked up for.

15. The Defendant now comes before this Honorable Court and asserts that his ACTUAL INNOCENCE has already been established by a Court.

16. In *People v Bernard Young*, 2017 Mich App Lexis 1779 this Court granted the Defendant's third motion for relief from judgment and ordered the release of Bernard Young based on recanted testimony. The Defendant in that case provided the court with affidavits from the victims recanting their trial testimony. This Court's decision was upheld by the Michigan Court of Appeals.

17. In this case the Defendant's ACTUAL INNOCENCE has already been established by Judge Deborah Thomas. In *People v Gregory Carl Washington*, 2017 Mich App LEXIS 1431, decided July 13, 2017, the Michigan Court of Appeals ruled:

Under MCL 600.611 "[c]ircuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit court's jurisdiction and judgments."

18. Finally, the Defendant asserts that this Court is legally bound by Judge Deborah Thomas' previous legal conclusion that the Defendant is ACTUALLY INNOCENT and must order the Defendants immediate RELEASE. See, *People v Pipes*, 475 Mich 267, 715 N.W.2d 290 (2006). In this case actual

prejudice has already been established. See, also *People v Drain*, 2009 Mich App. LEXIS 380 (2009), *People v McSwain*, 259 Mich App 654.

WHEREFORE, for all of the above reasons the Defendant prays that this Honorable Court dismiss the pending matter and order the Defendant's immediate release.

Respectfully submitted,

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