

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

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 13-004171-01-FC

v

MARWIN T. MCHENRY,

Defendant.

JOINT MOTION FOR RELIEF FROM JUDGMENT
UNDER MCR 6.500

ATTORNEYS FOR PLAINTIFF

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INTRODUCTION

Defendant Marwin McHenry and the People of the State of Michigan respectfully request that this Court vacate defendant's judgment of conviction and sentence, pursuant to MCR 6.500 *et seq.*

1. After a jury trial in Wayne County Circuit Court, presided over by the Hon. Gregory Bill, Mr. McHenry was convicted on October 10, 2013, of three counts of felonious assault, three counts of assault with intent to commit murder, and one count of felony firearm.
2. On October 24, 2013, Judge Bill ordered Mr. McHenry serve 1- to 4-year concurrent sentences on each count of felonious assault, 14- to 25-year concurrent sentences on each count of assault with intent to commit murder, and a consecutive 2-year sentence for the count of felony firearm. Mr. McHenry is currently incarcerated at Chippewa Correctional Facility in Kincheloe, Michigan.
3. In the fall of 2014, while Mr. McHenry's direct appeal was pending before the Michigan Court of Appeals, the Wayne County Prosecutor's Office began its own investigation into the validity of Mr. McHenry's conviction. During that investigation, Tanisha Harris, Tanisha Woodward, and Alexis Woodward testified on investigative subpoenas that James Bosley was the true perpetrator. Additionally, Quenten Bohanen and Diamond Williams told WCPO investigators that James Bosley had confessed to each of them.
4. After receiving this new evidence, Mr. McHenry moved to remand his case to the trial court for an evidentiary hearing regarding the testimony of Tanisha Harris, Tanisha Woodward, and Alexis Woodward. The Michigan Court of Appeals granted Mr. McHenry's motion for remand on May 27, 2015 (COA Case Number 318852).
5. The trial court held an evidentiary hearing on July 23, 2015, after which it denied Mr. McHenry's motion for a new trial. On January 26, 2016, the Michigan Court of Appeals

affirmed. On September 6, 2016, the Michigan Supreme Court denied leave to appeal (MSC Case Number 153365).

6. Mr. McHenry was represented during preliminary matters and at trial by James Anderson, and he was represented on direct appeal by Michael J. McCarthy. He was briefly represented by Craig Tank on state post-conviction.
7. This motion replaces the motion filed by Craig Tank before Hon. Vonda Evans on January 20, 2017.

FACTUAL SUMMARY

8. Mr. McHenry was found guilty of firing shots at a group of people during a fight between two rival families: the Bohanens and the Woodwards.
9. On the afternoon of July 10, 2012, Mr. McHenry was at the Woodwards' house visiting his then-girlfriend, Tanisha Harris, and their infant son. During his visit, at least five women from the Bohanen family—including Onjdua, Debbie, and Alyssa Bohanen—drove over to confront Tanisha Harris and her sister Alexis Woodward.
10. When the Bohanens drove by the Woodwards' house, Tanisha Harris and Alexis Woodward were standing outside, along with their mother, Tanisha Woodward. The Woodwards threw cans at the Bohanens' car as it passed.
11. The Bohanens parked some distance up the block, got out of the car, and walked toward the Woodwards. Some of the Woodwards, including Tanisha Harris, Alexis Woodward, and Tanisha Woodward, approached the Bohanens, preparing to fight. Mr. McHenry remained at the Woodwards' house with his and Tanisha Harris's son.
12. As the two groups met in the middle of the street, a man with a long black gun came out from behind a red car that belonged to the Woodwards. Alexis Woodward shouted encouragement to the man, who then raised his gun and fired multiple shots at the

- Bohanens. One of the bullets hit Onjdua Bohanen in the knee. The Bohanens fled.
13. When police interviewed Onjdua Bohanen in an ambulance directly after the shooting, she said the shooter might have been James Bosley. A few hours later, however, Onjdua, Debbie, and Alyssa Bohanen told police the shooter had been Mr. McHenry.
 14. At Mr. McHenry's trial in October 2013, Onjdua, Debbie, and Alyssa Bohanen again identified Mr. McHenry as the shooter, while Tanisha Harris identified her brother James Bosley as the shooter. The jury found Mr. McHenry guilty.
 15. In the fall of 2014, the WCPO initiated its own investigation into the validity of Mr. McHenry's verdict, which uncovered more evidence that James Bosley was the shooter.
 16. In September 2014, Diamond Williams—another of James Bosley's sisters—gave WCPO Investigator Jo Ann Kinney a signed statement saying that James Bosley had confessed to her and other family members that he was the real shooter.
 17. Also in September 2014, Quenten Bohanen—cousin of Onjdua Bohanen and then-boyfriend of Alexis Woodward—gave Investigator Kinney a signed statement saying that James Bosley had confessed to him as well.
 18. In February 2015, Alexis Woodward, Tanisha Harris, and Alexis Woodward testified on investigative subpoenas that James Bosley was the shooter, not Mr. McHenry. At an evidentiary hearing in July 2015, Tanisha Woodward and Alexis Woodward both testified again that James Bosley was the shooter. As Tanisha Harris was unavailable, her prior testimony from the investigative subpoena was incorporated into the record.
 19. In the summer of 2016, after the trial court denied Mr. McHenry's motion for a new trial, the WCPO continued to investigate the validity of his conviction.
 20. In October 2016, James Bosley voluntarily went to the Wayne County Prosecutor's Office and gave a signed confession to Investigator Kinney detailing how he shot at the

Bohanens.

21. That same month, Mr. McHenry passed a polygraph test administered by Investigator Kinney. Mr. McHenry confirmed that he did not shoot at the Bohanens and that he was not lying when he told investigators that James Bosley was the true shooter.

GROUND FOR RELIEF

Mr. McHenry is entitled to have his convictions vacated on the basis of newly discovered evidence: specifically, James Bosley's confessions to WCPO Investigator Jo Ann Kinney, Quenten Bohanen, and Diamond Williams.

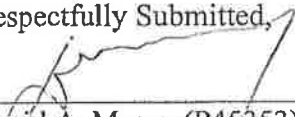
22. Relief from judgment is warranted on the basis of newly discovered evidence where: (1) the evidence itself, not merely its materiality, is newly discovered; (2) the newly discovered evidence is not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. *People v Cress*, 468 Mich 678, 692 (2003); see also MCR 6.508(D)(3).
23. James Bosley's confessions to Investigator Kinney, Quenten Bohanen, and Diamond Williams constitute newly discovered evidence that warrant relief under *Cress*.
24. Mr. McHenry has not previously requested relief on the basis of any of James Bosley's confessions, and James Bosley's confessions were not presented at trial because he did not confess to Investigator Kinney until three years after trial. Neither Diamond Williams nor Quenten Bohanen told investigators that James Bosley had confessed to them until 2014, the year after Mr. McHenry's trial. Further, before Mr. McHenry's trial, his trial counsel had sought witnesses to testify that Bosley was the true shooter, with no success.
25. Finally, this evidence is corroborated by the three previously presented witnesses who testified at Mr. McHenry's post-conviction hearing that James Bosley was the shooter. When the new and previously presented evidence is weighed together, it is clear that a

different result at retrial would be probable. Mr. McHenry is thus entitled to relief.

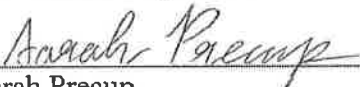
RELIEF REQUESTED

Given the new evidence exonerating Mr. McHenry, the parties respectfully and jointly request that this Court vacate the defendant's judgment of conviction and sentence.

Respectfully Submitted,




David A. Moran (P45353)
Attorney for Defendant

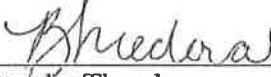


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Dated: April 26, 2017

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Dated: April 26, 2017