

APPENDIX A

Decision of State Court of Appeals

Court of Appeals, State of Michigan

ORDER

People of MI v Deryl Dude Nelson

Cynthia Diane Stephens
Presiding Judge

Docket No. 357351

Christopher M. Murray

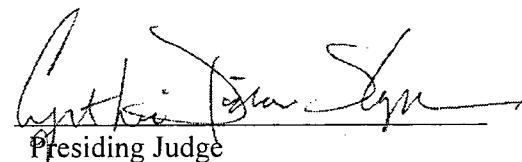
LC No. 14-003572-01-FC

Anica Letica
Judges

The motion to amend the application is GRANTED.

The delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the motion for relief from judgment.

The motion to "assert 'first time on appeal' Confrontation Clause violation" is DENIED.



Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on



September 8, 2021

Date



Chief Clerk

APPENDIX A

APPENDIX B

Decision of State Trial Court

THIRD JUDICIAL CIRCUIT COURT CRIMINAL DIVISION
COUNTY OF WAYNE
STATE OF MICHIGAN

STATE OF MICHIGAN

HON. DARNELLA D. WILLIAMS-CLAYBOURNE
Case No. 14-003572-01-FC

v

DERYL DUDE NELSON

OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR RELIEF
FROM JUDGMENT

At a session of Court held at the Frank Murphy Hall of Justice
in the City of Detroit, Wayne County, Michigan
on: 3/30/2021

This matter is before the Court on Defendant's Motion for Relief from Judgment
pursuant to MCR 6.500 *et. seq.* This Court has reviewed the Motion and being
otherwise advised it is ordered that Defendant's Motion is DENIED.

BACKGROUND

Defendant was charged with Count 1) Homicide—Murder—Second Degree and
Count 2) Reckless Driving Causing Death. Defendant was found guilty after a jury
trial on August 1, 2014. On August 21, 2014, Defendant was sentenced to 25 years
to 50 years on Count 1 and 12 years to 24 years on Count 2.

After his conviction and sentence, Defendant appealed by right to the Michigan
Court of Appeals. On January 12, 2016, The Michigan Court of Appeals affirmed
Defendant's conviction. Docket 323685. On May 2, 2016, the Michigan Supreme
Court denied Defendant's application for leave to appeal. Docket 153217.

Defendant filed his first Motion for Relief from Judgment on April 16, 2018, which
was denied on May 25, 2018. On September 19, 2018, Defendant filed another
Motion for Relief from Judgment which was denied on September 28, 2018.
Defendant has now filed his third Motion for Relief from Judgment, dated December

1
APPENDIX B

22, 2020. On January 11, 2021, Defendant filed an amended Motion for Relief from Judgment. The Court has reviewed both Motions and finds that Defendant's Motions should be denied for the reasons stated below.

ANALYSIS

Once a defendant is convicted and has exhausted the appellate procedures, MCR 6.500 et. seq. provides one last attempt at appealing a defendant's conviction. MCR 6.501 indicates that "a judgment of conviction and sentence entered by the circuit court not subject to appellate review" is governed only by a motion for relief from judgment. MCR 6.502(G)(1) provides that a defendant may file "one and only one motion for relief from judgment . . . with regard to a conviction." A defendant is prohibited from filing a successive motion for relief from judgment unless the motion is "based on a retroactive change in law . . . or a claim of new evidence." MCR 6.502(G)(2).

This Court's review of Defendant's Motion for Relief from Judgment is governed, in part, by MCR 6.508. Under that rule, a defendant has the burden of establishing that he is entitled to the relief requested. MCR 6.508(D). Moreover, a court may not grant relief based on grounds "which could have been raised on appeal from the conviction and sentence . . . unless the defendant demonstrates good cause [for failing to raise the issues on appeal or in a prior motion] . . . and actual prejudice." MCR 6.508(D)(3)(a)-(b). MCR 6.508 provides that the court has discretion to determine whether an evidentiary hearing is necessary, MCR 6.508(B). Based on the nature of Defendant's allegations and this Court's review of the record, this Court determines that an evidentiary hearing is not necessary.

The practice of multiple or "successive" motions for relief from judgment has been abolished. Only one motion for relief from judgment may be filed, unless the successive motion raises a claim of newly discovered evidence, or a retroactive change in the law. The rule went into effect August 1, 1995, and does not preclude a defendant who had filed a motion for relief from judgment before that time from filing another one.

Once the trial judge determines that the defendant had not raised one of the exceptions, the motion must be dismissed. *People v. Swain*, 288 Mich. App. 609, 794 N.W.2d 92 (2010).

This Court finds that Defendant has not raised any issues pertaining to newly discovered evidence, nor does Defendant cite any retroactive changes in the law

by which the Court would have the authority to review his successive Motion for Relief from Judgment.

Furthermore, Defendant raises issues with the complaint in addition to arguing that jurisdiction was never properly obtained over him. Both of these issues were addressed by the Michigan Court of Appeals in a written opinion dated January 12, 2016, docket 323685. As such, even if Defendant had not filed a successive motion for relief from judgment, Defendant's claims would still be barred under MCR 6.508(D)(2).

ORDER

For the reasons stated above, Defendant's Motion for Relief from Judgment is DENIED.



Hon. Darnella D. Williams-Claybourne

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK

APPENDIX C

Decision of State Supreme Court Denying Review

Order

Michigan Supreme Court
Lansing, Michigan

May 31, 2022

Bridget M. McCormack,
Chief Justice

163809

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

SC: 163809
COA: 357351
Wayne CC: 14-003572-FC

DERYL DUDE NELSON,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the September 8, 2021 order of the Court of Appeals is considered, and it is DENIED, because the defendant's motion for relief from judgment is prohibited by MCR 6.502(G).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 31, 2022



Clerk

APPENDIX E

APPENDIX D

Order of State Supreme Court Denying Rehearing

Order

Michigan Supreme Court
Lansing, Michigan

July 28, 2022

Bridget M. McCormack,
Chief Justice

163809 (33)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 163809
COA: 357351
Wayne CC: 14-003572-FC

DERYL DUDE NELSON,
Defendant-Appellant.

On order of the Court, the motion for reconsideration of this Court's May 31, 2022 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).



APPENDIX D

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 28, 2022

A handwritten signature in black ink, appearing to read "Larry S. Royster".

a0725

Clerk

APPENDIX E

Motion Hearing Transcript 7-18-2014 pp 1-15

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

PEOPLE OF THE STATE OF MICHIGAN,

-VS-

Case No. 14-3572

DARYL DUDE NELSON,
Defendant.

MOTION HEARING

Before the HONORABLE CYNTHIA GRAY
HATHAWAY, Circuit Judge, at Detroit, Michigan on
July 18, 2014.

APPEARANCES:

RON HAYWOOD,
Assistant Prosecuting Attorney
Appearing on behalf of the People

ARNOLD WEINER,
Attorney-at-Law
Appearing on behalf of the Defendant

APPENDIX E

I N D E X

July 18, 2014

MOTION HEARING

E X H I B I T S

(None Marked During These Proceedings)

July 18, 2014

Detroit, Michigan

Morning Session

THE CLERK: Case Number 14-3572

-01; People v Daryl Nelson.

This matter is here for a Motion

Hearing.

Appearances, please.

10 MR. HAYWOOD: Good morning, Your
11 Honor, Ron Haywood for the People.

MR. WEINER: Good morning. Arnold
Weiner for the Defense, on behalf of Mr. Nelson.

Your Honor, We have filed many, many motions with the Court.

16 THE COURT: Did the Court decide the
17 Motion to Squash?

MR. HAYWOOD: Yes, Your Honor,

THE COURT: The Court denied it.

20 MR. WEINER: Judge, one of the --
21 the primary motion here, is the one, where there
22 has been a failure to have the proper 'swear-to'.
23 And, there has been a failure of a return, pursuant
24 to -- but, before I get into my argument, the Court
25 has to know, and I am sure that the Court knows,

1 that in order to have anybody before the Court
2 before the charges, the Court has to have
3 jurisdiction over the person. That jurisdiction
4 has to -- and sort of proper service, proper
5 process upon the parties. And jurisdiction can
6 never be presumed. No sanctions can be imposed
7 absent proof of jurisdiction. I have a plethora of
8 case law.

9 THE COURT: Okay, I am aware of all
10 of that.

11 MR. WEINER: But, the Court realizes
12 this, the main issue here is of the return. As I
13 indicated last time we were here --

14 THE COURT: Return of the what?

15 MR. WEINER: In going through the --
16 I am sorry, on the 'swear-to'.

17 THE COURT: Mr. Weiner, I don't
18 know what you are talking about.

19 MR. WEINER: Okay.

20 THE COURT: I am asking you:
21 Swear-to what; and, return of what?

22 MR. WEINER: I am talking about the
23 swear-to for the Complaint.

24 THE COURT: Okay.

25 MR. WEINER: A Magistrate will issue

1 a warrant on presentation of proper complaint,
2 alleging the offense, and the complaint must be
3 sworn-to. We all know that the Officer has to
4 raise his hand and be sworn before the Magistrate
5 and can give probable cause, or some facts to
6 substantiate the basis as under MCLA 764.18 and
7 also MCR 6.102.12(b).

8 Now, it goes on to --

9 THE COURT: Let's stop there.

10 How am I going to know what happened
11 with the Magistrate?

12 MR. WEINER: Exactly. Let me go on
13 for ten seconds more, Judge.

14 THE COURT: Okay.

15 MR. WEINER: Under the Court Rule,
16 the statute for finding probable cause when it
17 issues a Warrant is incorporated by the Court Rule,
18 yes, MCR 6.102 which also adds the requirements
19 that when oral testimony is relied upon by the
20 Court -- the Officer came before the Magistrate and
21 raised their right hand and swears as required by
22 Court Rule in law, it must be adequately preserved
23 in some fashion so as to permit a review of its
24 sufficiency. Judge, that is what the Court Rule
25 says that in order to have the jurisdiction.

1 There is on the Register of Actions
2 or any other document, it only says on March 5th,
3 the complaint was authorized. I went, because Mr.
4 Nelson really persisted in this, and I wanted to
5 show him because these are procedural matters, and
6 I wanted to make sure to show him that this was
7 properly done.

I went and as I note on one of my Motions, I found out on the day that this Motion was filed, I went to the District Court Clerk, and ordered a transcript of the "swear-to". She says, "there is no transcript". We don't keep a transcript of what happened on that day. I left her name and her telephone number. For the record, her name is Ms. Triplett, T-r-i-p-l-e-t-t, (313) 965-5944.

22 THE COURT: I don't know if a
23 mistake has been made. Did you ask for an
24 Evidentiary Hearing with the Magistrate, to get the
25 Magistrate, the Officer, all of those people,

1 because without that, there is nothing that this
2 Court can do.

3 MR. WEINER: I am saying, Judge, I
4 am telling you, I came at the last moment --

5 THE COURT: The question is: Did
6 you ask for an Evidentiary Hearing to bring all of
7 those people here so that we can have an
8 Evidentiary Hearing?

9 MR. WEINER: No, I did not.

10 I just --

11 THE COURT: It sounds as if that is
12 what we need.

13 MR. WEINER: No, Judge, I just found
14 this out within the last four days.

15 THE COURT: Okay.

16 MR. WEINER: And, therefore, if
17 there is no 'swear-to' recorded transcript or
18 something, as the Court will sense, to adequately
19 preserve, then there was no never a warrant issued.

20 If there was never a Warrant issued, it was a
21 nullity from day one. So, then there can't be
22 charges. I am not saying that it can't be
23 corrected by dismissing --

24
25 THE COURT: Let me hear from the

1 Prosecutor.

2 MR. WEINER: Your Honor --

3 THE COURT: Mr. Weiner, I have heard
4 enough. Let me hear from the Prosecutor.

5 MR. HAYWOOD: I guess there would be
6 no charges ever filed, Your Honor. I think that in
7 your Court File it does record that the Complaint
8 was sworn out to by the complainant, I believe it
9 was Derrick Ragsdale from the Michigan State
10 Police.

11 THE COURT: I don't have anything to
12 say that it was, I don't have anything to say that
13 it wasn't.

14 MR. HAYWOOD: I did look in the
15 Court File, Your Honor, and the Complaint is in the
16 Court File. And, it states that the Officer came
17 before the Magistrate, Magistrate Charles Anderson
18 and that he swore to the complaint, and the
19 complaint was signed off on. I believe that that
20 is the recorded document that Mr. Weiner is
21 referring to. This is the way we start all of our
22 complaints, in Wayne County and all of the other
23 counties as well. That the officer comes in and
24 swears before the Magistrate, and the Magistrate
25 signs off on the complaint.

1 THE COURT: All right. You have a
2 copy there?

3 MR. HAYWOOD: I do have a copy.

4 THE COURT: Let's make a couple of
5 copies; one for the Court, and one for the Defense.

6 MR. HAYWOOD: The return has been
7 signed-off on. The return has been signed off on.
8 After the Preliminary Examination, Judge Baltimore
9 signed off on the return. So that has all been
10 satisfied. So, all of the procedural matters in
11 this case have been satisfied, Your Honor.

12 THE COURT: Was the Magistrate
13 Charles Anderson?

14 MR. HAYWOOD: Yes, ma'am.

15 MR. WEINER: There has to be a
16 recording, it has to be something and adequately
17 preserved, and there is a -- all of the ones that I
18 have seen in the other District Courts, I am there,
19 they come in, it is on the record. They raise
20 their hand, swear to probable cause -- such and
21 such, okay. The Judge signs it. There is a
22 recording that it was done. The Officer raises his
23 hand. We have nothing here to show this. The
24 transcript was the best evidence. We don't have a
25 transcript.

1 THE COURT: We have a copy of the
2 Magistrate and the officers' signature. That is a
3 recording.

4 MR. WEINER: I don't have a copy of
5 that, Judge. I don't have what Judge Baltimore
6 said or did. I would like to see that.

13 MR. HAYWOOD: Yes, Your Honor.

14 THE COURT: The Court is going to
15 deny that Motion.

Let's move on to the next one.

17 MR. WEINER: We have evidence that
18 the return of the complainant was provided by the
19 Officer. That is a question.

20 MR. HAYWOOD: That is also in the
21 Court File.

22 MR. WEINER: The next Motion then,
23 there is a Violation of the 14 day rule.

1 of the Court, the matter was adjourned to April
2 28th, 2014. That was beyond the 14 day rule.

3 My client informs me that he is here
4 to say in open court, he never consented or gave
5 permission to go beyond the 14 day rule. Then that
6 procedure because the 14th Amendment was denied,
7 and because of that, we are asking that the matter
8 be dismissed without prejudice.

9 MR. HAYWOOD: Your Honor, there is
10 no other indication, except on the Register of
11 Actions, that it was adjourned at the request of
12 the Court.

13 I was present at that hearing.

14 THE COURT: On April 8th?

15 MR. HAYWOOD: Yes, ma'am.

16 Defense cites Toumi (ps) as the case
17 he is relying on for the Court to dismiss this
18 case. Toumi -- I have a copy if the Court wants to
19 see it -- in Toumi there were six exams scheduled
20 that day. At the end of the day, the Court did not
21 have time to finish the Exam.

22 The Defendant, at the time, said no,
23 we want our hearing, and we want it today. The
24 Court still adjourned it. They came back on the
25 hearing, and they again demanded that the case be

1 | dismissed.

15 MR. HAYWOOD: That is distinguished
16 from Toumi where they demanded it that day. No,
17 Judge,, we will not agree to this continuation, we
18 want our Exam today. When an attorney agrees, and
19 the client agrees, that is an agreement. That is
20 what happened in this case, Your Honor.

24 MR. WEINER: No, Your Honor.

25 THE COURT: As I say, I have looked

1 at the transcript on April 28th, 2014, there is no
2 objection from the defense.

3 Everybody moved forward, and the
4 Exam was held on the 28th.

5 So, I will deny the Motion to
6 Dismiss.

7 Okay.1 We have a trial date coming
8 up; right?

9 MR. WEINER: Yes, Your Honor.

10 THE COURT: Any offers?

11 MR. HAYWOOD: The offer is for
12 Murder II, Count I, twenty-five to forty,
13 dismissing the other counts.

14 Defense also filed other Motions.

15 MR. WEINER: Those were --

16 THE COURT: Let's continue. What
17 is the offer?

18 MR. HAYWOOD: Twenty-five to forty,
19 Your Honor in the Michigan Department of
20 Corrections.

21 THE COURT: Defense?

22 MR. WEINER: Now that we have these
23 Motions, and Mr. Nelson is aware that this Court is
24 denying the Motion, and continuing its
25 jurisdiction -- I will have to go and speak to

1 him. As we were talking last week, we will go to
2 speak with his superior to see if this matter can
3 be resolved.

6 If you resolve it before then, you
7 can come back and go on the record.

8 MR. HAYWOOD: Any other motions
9 are --

10 THE COURT: I don't have any other
11 motions.

12 MR. HAYWOOD: There were quite a
13 few, I didn't know -- there was a Motion based upon
14 Fraud of the Allegations, that all of the documents
15 had not been submitted, but with the jurisdictional
16 requirement showing that the "swear to" was done
17 and the return was done. That takes care of it.

18 MR. WEINER: We withdraw any
19 Motions.

20 THE COURT: All right.

21 MR. HAYWOOD: Thank you, Your Honor.

22 (Matter concluded)

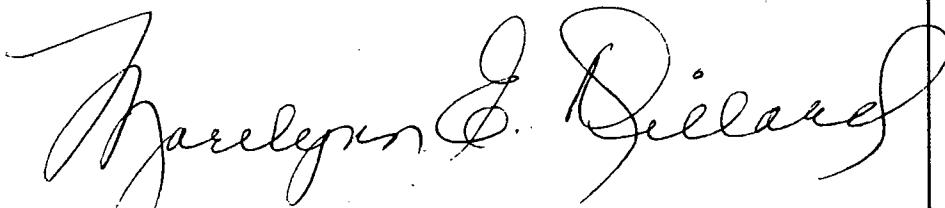
STATE OF MICHIGAN

SS

COUNTY OF WAYNE

I, MARILYNN E. DILLARD, Certified Court Reporter in and for the County of Wayne, State of Michigan, do hereby certify that I stenographically reported the proceedings had in this matter.

That the proceedings were reduced to typewritten form by means of Computer-assisted transcription; and that the foregoing pages constitute a true record of the proceedings.



Marilynn E. Dillard, CSR-0006

Registered Professional Reporter

FAPR

APPENDIX F

Precipe and Motion for Evidentiary Hearing

STATE OF MICHIGAN
Third Judicial Circuit Court

PRAECIPE
FOR
MOTION

CASE NO.

14-003572-01-FC

THE PEOPLE OF THE STATE OF MICHIGAN

-vs-

DARYL D. NELSON

Defendant

RECEIVED BY
JUL 14 2014
WAYNE COUNTY
PROSECUTING ATTORNEY'S OFFICE

TO THE ASSIGNMENT CLERK:

Please place a Motion for (here state nature of motion in brief form) MOTION TO DISMISS

(1) NO MAGISTRATE RETURN (2) NO SWORN AFFIDAVIT (3) 14 day RULE, & MOTION FOR EVIDENTIARY HEARING

on the Motion Docket for Friday 7-18-14 before Judge Cynthia Wetherby

Date: 7-11-14 20 14

Arnold L. Weiner P 22104
Attorney for Defendant Michigan State Bar #

Arnold L. Weiner, Esq.
2901 Auburn Rd., Suite 200
Auburn Hills MI 48326-3286

Telephone 248 709 6045

NOTE: UNDER MCR 2.107(c) (1) OR (2)

PROOF OF SERVICE
(7 Days notice required)

I swear that on _____ I served a copy of the attached motion and praecipe upon the Wayne County Prosecutor, Third Judicial Circuit Court, Criminal Division Section by (mail) (personal) service. (Cross one out)

Sworn and subscribed before me

on: _____

Arnold L. Weiner
Attorney for Defendant

Notary Public

County

7 Day Notice waived

Date

My Commission Expires

Prosecuting Official

Michigan State Bar #

APPENDIX F
PRAECIPE FOR MOTION

151

Sudges copy

RECEIVED BY

JUL 14 2014

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT
WAYNE COUNTY
PROSECUTING ATTORNEY'S OFFICE

PEOPLE OF THE STATE OF MICHIGAN

File No. 14-003571

Plaintiff,

HON: CYNTHIA G. HATHAWAY

-vs-

DARYL D. NELSON

Defendant

MOTION FOR EVIDENTIARY HEARING
BASED ON FRAUD UPON THE COURT

by his attorney

NOW COMES Defendant DARYL D. NELSON, *Arnold Weinkopf* hereby moves this court to conduct an evidentiary hearing based on fraud upon the court and states *the following facts as provided by defendant,*

The complaint and warrant was obtained by fraudulent practices on the part of the People of the State of Michigan, where false manufactured forged documents was used to deceive the court in violation of the statutes and against the dignity of the State of Michigan.

The assistant prosecutor Ron L. Haywood misrepresented the court with perjury statements and suppressed evidence in the above entitled case. The prosecutor knowingly, and willfully falsified documents and withheld material facts and made use of the false statements in violation of the law to deceive and misrepresent the court in an effort to illegally charge defendant in the above entitled cause.

Brady v. Maryland, 373 U.S. 85, 83 S.Ct 1194, L.Ed2d (1963).

There is no evidence in dispute that the assistant prosecutor Haywood provided a false manufactured complaint and warrant on March 5, 2014, and conspired with the 36th District Court Judge to falsify a complaint and warrant, with full knowledge no complaining witness swore out a affidavit under oath establishing probable cause to arrest Mr. Nelson. People v. Holbrook, 373 Mich. 94, NW2d (1964).

This was fraud upon the court, and no claim procured by deception or suppression of facts, ought to be considered as binding or conclusive. A fraud arising from the suppressing of the truth is as prejudicial as that which springs from the assertion of a falsehood and courts have not hesitated to sustain recovering where the truth has been suppressed with the intent to defraud.

It is evident that defendant received ineffective assistance of counsel who failed to safeguard his Sixth Amendment right deemed necessary to insure his fundamental right to life and liberty.

This Court may relieve a party from a final judgment order, or proceeding on the grounds of fraud, misrepresentation, or other misconduct of the opposing party. MacArthur v. Militichm, 110 Mich. App. 389; 313 NW2d 297 (1981).

WHEREFORE, Defendant Daryl D. Nelson, prays that this Court enter an order conducting a evidentiary hearing to address the issues of fraud upon the court.

7-11-14

Date:

Arnold L. Weiner
Arnold L. Weiner, Esq.
2901 Auburn Rd., Suite 200
Auburn Hills MI 48326-3286
P22104
248 709-6045