

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARK T. CRAIGHEAD,

Defendant-Appellee.

UNPUBLISHED

October 28, 2021

No. 356393

Wayne Circuit Court

LC No. 00-007900-01-FC

Before: STEPHENS, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

The prosecution appeals by leave granted¹ the trial court’s February 4, 2021 order granting the successive motion for relief from judgment filed by defendant. We affirm.

I. BACKGROUND

This is the third appeal arising out of the shooting death of Chole Pruett on or about June 27, 1997. On June 21, 2000, defendant gave a statement to police, in which he admitted shooting and killing Pruett while wrestling a gun away from him. Defendant was convicted of voluntary manslaughter, MCL 750.321, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. See *People v Craighead*, unpublished per curiam opinion of the Court of Appeals, issued December 22, 2005 (Docket No. 243856) (*Craighead I*); *People v Craighead*, unpublished order of the Court of Appeals, entered November 22, 2011 (Docket No. 301465) (*Craighead II*).

In December 2009, defendant filed his initial motion for relief from judgment, asserting that he was entitled to relief from judgment based upon newly discovered evidence, which consisted of telephone records from Sam’s Club in Farmington Hills in June 1997 that purportedly

¹ This Court entered an order granting the prosecution’s application for leave to appeal on April 20, 2021. *People v Craighead*, unpublished order of the Court of Appeals, entered April 20, 2021 (Docket No. 356393).

established that defendant made four telephone calls from inside of the locked store on the night of Pruett's death such that defendant could not have killed Pruett. After an evidentiary hearing, the trial court denied defendant's motion, reasoning that defendant failed to present credible evidence that he was the one who made telephone calls from inside the locked store on the night of Pruett's death such that there was no reasonable probability that the evidence would have affected the outcome of defendant's jury trial.

In February 2020, defendant filed a successive motion for relief from judgment, asserting that new evidence had been discovered regarding Investigator Simon's history of misconduct which undermined her testimony at trial and demonstrated a pattern of eliciting false confessions. The trial court granted defendant's successive motion for relief from judgment, reasoning in relevant part that defendant demonstrated the existence of new, admissible evidence that made a different result probable on retrial. This appeal followed.

II. ANALYSIS

A. STANDARD OF REVIEW

"We review a trial court's decision on a motion for relief from judgment for an abuse of discretion and its findings of facts supporting its decision for clear error." *People v Swain*, 288 Mich App 609, 628; 794 NW2d 92 (2010) (citation omitted). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes . . . or makes an error of law." *Id.* at 628-629 (citations omitted). "Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made." *People v Chaney*, 327 Mich App 586, 587 n 1; 935 NW2d 66 (2019) (quotation marks and citation omitted). "The interpretation of a court rule is a question of law that is reviewed de novo." *Swain*, 288 Mich App at 629 (citation omitted). Furthermore, a trial court's decision regarding the admissibility of evidence is reviewed for an abuse of discretion. *People v Lane*, 308 Mich App 38, 51; 862 NW2d 446 (2014).

B. MCR 6.502

The prosecution argues that defendant's successive motion for relief from judgment was procedurally barred by MCR 6.502(G) because defendant failed to present newly discovered evidence concerning Investigator Simon's misconduct. We disagree.

Except as provided in MCR 6.502(G)(2), "one and only one motion for relief from judgment may be filed with regard to a conviction." MCR 6.502(G)(1). A defendant may file a second or subsequent motion for relief from judgment based on a "claim of new evidence that was not discovered before the first such motion." MCR 6.502(G)(2).

In support of defendant's successive motion for relief from judgment, defendant relied upon potential impeachment evidence that did not exist at the time of defendant's initial motion for relief from judgment, which was filed in December 2009. Namely, defendant relied upon the May 11, 2019 affidavit of Justly Johnson and the November 24, 2019 affidavit of Lamarr Monson, both of whom attested that Investigator Simon's misconduct led to their wrongful convictions. Defendant also relied upon excerpts from three separate civil complaints filed by Johnson, Monson, and Johnson's codefendant, Kendrick Scott, in the United States District Court for the

Eastern District of Michigan between February 2018 and September 2019. The complaints contained allegations concerning Investigator Simon's misconduct and the manner in which such misconduct led to the wrongful convictions of Johnson, Monson, and Scott. Furthermore, defendant relied upon excerpts from Monson's February 24, 2019 deposition and Investigator Simon's June 3, 2019 deposition taken as part of the civil case filed by Monson in the United States District Court for the Eastern District of Michigan. Monson's deposition testimony was consistent with his affidavit, and Investigator Simon acknowledged in her deposition that she could not recall investigating Monson's alibi while investigating his case. Defendant also relied upon excerpts from Investigator Simon's September 21, 2010 trial testimony in a civil case filed by Damon Nathaniel against the city of Detroit, Investigator Simon, and two other Detroit Police Officers in the United States District Court for the Eastern District of Michigan during which Investigator Simon acknowledged that she interrogated Nathaniel at a time when he should have been given the opportunity for release on bond. Lastly, defendant relied upon a March 31, 2011 opinion and order of the United States District Court for the Eastern District of Michigan providing that Nathaniel succeeded on an ensuing claim for false imprisonment.

Although none of the evidence relied upon by defendant existed at the time defendant filed his initial motion for relief from judgment in December 2009, the prosecution posits that this evidence cannot be considered newly discovered because similar evidence had been in the public domain in the form of both civil lawsuits and criminal appeals since before defendant's trial. We disagree with the prosecution's assertion.

In support of the prosecution's argument that the evidence presented by defendant cannot be considered newly discovered, the prosecution relied upon complaints and motions filed in multiple civil lawsuits brought against Investigator Simon and others. However, these documents could not have been utilized to effectively impeach Investigator Simon's testimony at defendant's trial. Although the complaints and motions included allegations that Investigator Simon and others engaged in misconduct while investigating crimes, these cases did not result in any findings of wrongdoing and were ultimately settled.

The prosecution also relied upon the opinion of the United States Court of Appeals for the Sixth Circuit in *Peet v Detroit*, 502 F3d 557 (CA 6, 2007). Again, this case could not have been utilized to effectively impeach Investigator Simon's testimony at defendant's trial. Although Investigator Simon was one of several named defendants in the action brought pursuant to 42 USC 1983, the United States Court of Appeals for the Sixth Circuit did not mention Investigator Simon by name in the opinion and ultimately rejected the plaintiffs' assertions that their arrests were not supported by probable cause. *Peet*, 502 F3d at 558-568.

The prosecution further relied upon criminal appeals including this Court's unpublished opinions in *People v Moore*, unpublished per curiam opinion of the Court of Appeals, issued May 12, 2000 (Docket No. 209505) and *People v Eddleman*, unpublished per curiam opinion of the Court of Appeals, issued March 19, 2002 (Docket No. 224957). However, neither of these cases could have been utilized to effectively impeach Investigator Simon's testimony at defendant's trial. In *Moore*, this Court affirmed the trial court's order denying the defendant's motion to suppress statements made to Investigator Simon during a murder investigation. *Moore*, unpub op at 1. In doing so, this Court reasoned that the trial court did not clearly err when it found that the defendant's statements were voluntary and accurately reflected in a written statement drafted by

Investigator Simon. *Id.* In *Eddleman*, this Court did not mention Investigator Simon by name. *Eddleman*, unpub up at 1. Although this Court held that the trial court erred when it denied the defendant’s motion to suppress statements made to the police, this Court reasoned only that the trial court failed to correctly apply the preponderance of the evidence standard after concluding that the “defendant and the interrogating officer were equally credible in their diametrically opposing versions of what happened with regard to the voluntariness issue.” *Id.*

In sum, defendant’s successive motion for relief from judgment was not procedurally barred by MCR 6.502(G) because defendant presented newly discovered evidence concerning Investigator Simon’s misconduct. Although information concerning Investigator Simon’s misconduct existed before defendant filed his initial motion for relief from judgment, it does not appear that such information could have been utilized to effectively impeach Investigator Simon’s testimony at defendant’s trial.

C. MCR 6.508(D)(3)

The prosecution also argues that defendant’s successive motion for relief from judgment was barred by MCR 6.508(D)(3) because defendant could have raised the same grounds for relief at trial, on direct appeal, or in defendant’s initial motion for relief from judgment. We disagree.

MCR 6.508(D) provides that “[t]he defendant has the burden of establishing entitlement to the relief requested.” A court may not grant relief to the defendant if the defendant’s motion “alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under this subchapter[.]” MCR 6.508(D)(3).

For the same reason that defendant’s successive motion for relief from judgment was not procedurally barred by MCR 6.502(G), defendant’s successive motion for relief from judgment is not barred by MCR 6.508(D)(3). Although information concerning Investigator Simon’s alleged misconduct existed before defendant filed his initial motion for relief from judgment, it does not appear that such information could have been utilized to effectively impeach Investigator Simon’s testimony at defendant’s trial. Accordingly, defendant’s successive motion for relief from judgment did not allege grounds for relief that could have been raised on appeal from defendant’s convictions and sentences or in a prior motion for relief from judgment.

D. THE *CRESS* TEST

The prosecution further argues that the trial court abused its discretion when it determined that defendant was entitled to a new trial on the basis of new evidence under the four-prong test set forth in *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003). We disagree.

In order for a new trial to be granted on the basis of newly discovered evidence, a defendant must establish that: “(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.” *Id.* (quotation marks and citations omitted).

Initially, the first three prongs of the *Cress* test are satisfied. For reasons previously articulated, the evidence presented by defendant was newly discovered. Moreover, defendant did not present any evidence at trial regarding Investigator Simon's misconduct in any case other than his own. Thus, the evidence presented by defendant was not cumulative. Lastly, none of the evidence relied upon by defendant existed at the time of defendant's trial. Accordingly, defendant could not, using reasonable diligence, have discovered and produced the evidence at trial.

Next, the new evidence made a different result probable on retrial such that the final prong of the *Cress* test is satisfied. In order for newly discovered evidence to make a different result probable on retrial, the newly discovered evidence must be admissible. See *People v Darden*, 230 Mich App 597, 606; 585 NW2d 27 (1998) (noting that inadmissible newly discovered evidence would not entitle the defendant to a new trial).²

1. ADMISSIBILITY

The trial court did not abuse its discretion when it held that the newly discovered evidence proffered by defendant was admissible as evidence of a scheme, plan, or system under MRE 404(b).³ MRE 404(b)(1) provides as follows:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

“The general rule under MRE 404(b) is that evidence of other crimes, wrongs, or acts is inadmissible to prove a propensity to commit such acts.” *People v Denson*, 500 Mich 385, 397; 902 NW2d 306 (2017) (citation omitted). In *People v Vandervliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), our Supreme Court articulated the following standard for addressing the admissibility of evidence under MRE 404(b):

² Justice Kelly reiterated this principle in her concurring opinion in *People v Grissom*, 492 Mich 296, 324; 821 NW2d 50 (2012) (KELLY, J., concurring) by stating as follows: “[m]erely presenting a court with newly discovered evidence does not automatically support the grant of a new trial. Rather, to potentially effect a different result on retrial and thereby satisfy the fourth *Cress* factor, the newly discovered evidence must be admissible.”

³ In making this determination, the trial court addressed only the affidavits and depositions of Johnson and Monson, Investigator Simon's own testimony, and the opinion and order of the United States District Court for the Eastern District of Michigan providing that Nathaniel succeeded on a claim for false imprisonment. Accordingly, our analysis is limited to the admissibility of this evidence.

First, that the evidence be offered for a proper purpose under Rule 404(b); second, that it be relevant under Rule 402 as enforced through Rule 104(b); third, that the probative value of the evidence is not substantially outweighed by unfair prejudice; fourth, that the trial court may, upon request, provide a limiting instruction to the jury.

The prosecution's argument on appeal is limited to the relevancy of the evidence in relation to the purpose for which the evidence was offered. "Other-acts evidence is logically relevant if two components are present: materiality and probative value." *Denson*, 500 Mich at 401 (citation omitted). "Materiality is the requirement that the other-acts evidence be related to any fact that is of consequence to the action." *Id.* (citation and quotation marks omitted). "Evidence is probative if it tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* at 401-402 (citations and quotation marks omitted). Ultimately, it must be determined whether the proponent of the evidence has established "some intermediate inference, other than the improper inference of character, which in turn is probative of the ultimate issues in [the] case[.]" *Id.* at 402 (citation and quotation marks omitted). In determining whether the proponent of the evidence has established some intermediate inference other than the improper inference of character, this Court examines "the similarity between the other act and the charged offense." *Id.* (citation omitted). To be admissible when its theory of relevance is based on the alleged similarity of the two acts, the proponent of the evidence is required to show a "striking similarity" between the other act and charged offense. *Id.* at 403 (citation omitted).

There is a striking similarity between Investigator Simon's acts in Monson's case and Investigator Simon's acts in defendant's case. Defendant and Monson were both interrogated by Investigator Simon and presented with statements that Investigator Simon wrote. According to both defendant and Monson, the written statements contained factual inaccuracies. Nevertheless, defendant and Monson signed the written statements because they were both told that they would be allowed to go home if they did so. Monson was ultimately exonerated after years of incarceration. Accordingly, evidence concerning Investigator Simon's actions in Monson's case was admissible as evidence of a scheme, plan, or system to obtain false confessions under MRE 404(b).

Furthermore, there is a striking similarity between Investigator Simon's acts in Johnson's case and in defendant's case. Defendant and Johnson were both interrogated by Investigator Simon and told that they were going to be charged with murder regardless of their professions of innocence. Although Johnson did not ultimately confess, Investigator Simon interrogated Johnson until he broke down in tears. Similarly, defendant testified that he was "broken down" when he signed the written statement drafted by Investigator Simon. Defendant and Johnson were both told that they would be convicted of murder if they did not confess. Johnson was ultimately exonerated after years of incarceration. Accordingly, evidence concerning Investigator Simon's actions in Johnson's case was admissible as evidence of a scheme, plan, or system to obtain false confessions under MRE 404(b).

In addition, the trial court did not abuse its discretion when it held that the newly discovered evidence proffered by defendant could be utilized to demonstrate Investigator Simon's character for untruthfulness. Although the trial court did not identify the specific evidentiary rule supporting

its conclusion, it appears that the trial court was referring to MRE 608, which addresses the admissibility of evidence concerning the character and conduct of a witness. MRE 608. MRE 608(b) provides as follows:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Under MRE 608(b), defense counsel would be permitted on cross-examination to inquire about instances in which Investigator Simon has lied to show her character for untruthfulness. Specifically, defense counsel would be permitted to inquire about instances in which Investigator Simon withheld exculpatory information from the Wayne County Prosecutor's Office, falsely stated in a search warrant that an autopsy revealed that a victim died of multiple stab wounds when in fact the autopsy revealed that the victim died of blunt force trauma to the head, threatened to falsely charge a teenager with murder if he did not implicate Jonson and Scott in a murder, and interrogated Nathaniel despite her knowledge that Nathaniel should have been released on bond.

2. PROBABILITY OF A DIFFERENT RESULT UPON RETRIAL

The new evidence would make a different result probable on retrial. "[T]he evidence that must be taken into consideration when assessing a claim of newly discovered evidence is not simply the evidence presented at the original trial, but also the evidence that would be presented at a new trial." *People v Johnson*, 502 Mich 541, 571; 918 NW2d 676 (2018) (citation omitted).

During trial, the prosecution presented evidence that defendant was a close friend of Pruett's, may have had knowledge that Pruett recently received a sizeable cash settlement, and was with Pruett on the date of Pruett's death. Investigator Simon also testified that defendant signed a written confession in which defendant admitted to killing Pruett. In contrast, defendant presented evidence that he was working in a locked store at the time of Pruett's death such that he could not have killed Pruett. Defendant testified that Investigator Simon coerced him to sign the written confession, which was false. The newly discovered evidence presented by defendant undermines the validity of defendant's confession, which served as the most damaging evidence in the case. The newly discovered evidence also indicates that Investigator Simon's interrogation tactics demonstrated a scheme, plan, or system to obtain false confessions. Additionally, the newly discovered evidence concerning Investigator Simon's history of lying undermines her credibility as a witness. When considered in light of the telephone records bolstering the credibility of defendant's alibi at the time of Pruett's death, the new evidence makes a different result probable on retrial. In sum, the trial court did not abuse its discretion when it determined that defendant was entitled to a new trial on the basis of new evidence under the four-prong test set forth in *Cress*, 468 Mich at 692.

E. FACTUAL FINDINGS

Lastly, the prosecution asserts that the trial court's opinion and order contained factual inaccuracies that are clearly erroneous. While these assertions may have merit, the prosecution fails to point out how such inaccuracies affected the trial court's ultimate conclusion. The prosecution first argues that the trial court erroneously found that defendant presented affidavits and deposition testimony from three exonerees when in fact defendant had only presented affidavits and deposition testimony from two exonerees. While true, this minor misstatement has no bearing on the trial court's ultimate conclusion. The prosecution next argues that our Supreme Court had not determined that statements obtained from Investigator Simon lacked credibility. Although our Supreme Court did not mention Investigator Simon by name in *Johnson*, 502 Mich at 541, our Supreme Court referenced police coercion of two witnesses when concluding that Johnson and Scott were entitled to new trials. Further, the prosecution argues that the trial court erroneously found that the prosecution failed to refute the significance, materiality, or validity of the evidence proffered by defendant. While the prosecution did briefly discuss the validity of the evidence proffered by defendant, the trial court's conclusion does not amount to clear error. Indeed, the trial court considered the prosecution's argument that the evidence was not admissible and ultimately disagreed with that premise.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ David H. Sawyer

/s/ Deborah A. Servitto