Order

Michigan Supreme Court
Lansing, Michigan

June 18, 2026

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

SC: 169837
COA: 373384
Wayne CC: 84-004677-FC

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

PAUL WENDELL RUSS,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the February 13, 2026 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WELCH, J. (*dissenting*).

I respectfully dissent from the Court's denial order. I would have remanded the matter to the trial court for the reasons that Judge YOUNG articulates in her dissent. I do not believe the trial court properly applied *People v Cress*, 468 Mich 678 (2003), which governs how courts review newly discovered evidence. Specifically, I agree with Judge YOUNG that the trial court and Court of Appeals failed to reconsider all the admissible evidence that would be presented in a retrial. See *People v Russ*, unpublished per curiam opinion of the Court of Appeals, issued February 13, 2026 (Docket No. 373384) (YOUNG, J., dissenting).

In 1985, a jury convicted defendant Paul Wendell Russ of murder. Defendant's direct appeal failed, as did his first motion for relief from judgment. Through the instant motion for relief from judgment, which is defendant's second, defendant presented newly discovered evidence in the form of an affidavit from James Jackson. In his affidavit, Jackson stated that someone else committed the crime and that he did not come forward at the time due to fear of retaliation. In response, the trial court conducted an evidentiary hearing at which Jackson testified.

To be granted a new trial on the basis of newly discovered evidence, a defendant must show 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." *Cress*, 468 Mich at 692 (quotation marks and citations omitted).

"In order to determine whether newly discovered evidence makes a different result probable on retrial, a trial court must first determine whether the evidence is credible." *People v Johnson*, 502 Mich 541, 566-567 (2018). "If a witness's lack of credibility is such that *no* reasonable juror would consciously entertain a reasonable belief in the witness's veracity, then the trial court should deny a defendant's motion for relief from judgment." *Id*. at 568. If, however, a trial court determines that a witness is *not* patently incredible, then its "credibility determination must bear in mind what a *reasonable juror* might make of the testimony, and not what the trial court itself might decide, were it the ultimate fact-finder." *Id*. at 568 (emphasis added). If a reasonable juror could find the new witness credible, then the trial court must determine whether the new evidence would make a different result probable at retrial by considering the evidence *previously* introduced at trial, as well as the evidence that would be presented at *retrial*. *Id*. at 571.

In this case, after conducting an evidentiary hearing on the motion, the trial court determined that the witness's testimony was "*not* patently incredible such that no reasonable juror would entertain a reasonable belief in [his] veracity." For that reason, it should have considered the witness' testimony in the landscape of all "evidence that was previously introduced at trial" and "evidence that would be admitted at retrial[.]" *Johnson*, 502 Mich at 571 (emphasis omitted). Instead, the trial court found that the new evidence would not make a different result probable on retrial without considering the limitations of the evidence against defendant.

As Judge YOUNG explains in her dissent, despite making thorough factual findings and presenting a thoughtful legal analysis, the trial court did not consider all the evidence presented at trial, as well as the evidence that would have been presented on retrial. The trial court did not consider, for example, the credibility issues that faced the prosecutor's chief witness or the motive presented by the new witness. Further, it did not consider the nature of the questions that jurors asked during deliberations. For that reason, I agree with Judge YOUNG that the trial court failed to consider the new evidence "in the landscape of all of the testimony offered at trial." *Russ* (YOUNG, J., dissenting), unpub op at 1.

For those reasons, I would have remanded this matter to the trial court to re-examine the case under *Cress*. I respectfully dissent.

I, Elizabeth Kingston-Miller, 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.

June 18, 2026

Clerk

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