Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V MARK MCCLOUD

Docket No. 377741

LC No. 88-011197-01-FC

Sima G. Patel
Presiding Judge

Allie Greenleaf Maldonado

Adrienne N. Young
Judges

The motion to file a delayed application for leave to appeal exceeding the 16,000-word limit set forth under MCR 7.212(B)(1) is GRANTED. The delayed application that was received on October 13, 2025, is accepted for filing.

Pursuant to MCR 7.205(E)(2), in lieu of granting leave to appeal, we VACATE the trial court's June 27, 2025 order and REMAND this matter to that court for further proceedings consistent with this order. By applying the *Cress*[1] standard in analyzing defendant's *Brady*[2] claim, the trial court erred. See *People v Milton*, 506 Mich 999 (2020) (MCCORMACK, C.J., concurring) ("Though *Brady* claims and *Cress* claims are often intertwined, trial courts must address each claim separately.") (footnote omitted). Put simply, the *Brady* standard is "less demanding" and is "widely recognized" as "more 'defendant-friendly' than the standard for granting a new trial on the basis of newly discovered evidence." See *People v Grissom*, 492 Mich 296, 355 n 38; 821 NW2d 50 (2012) (ZAHRA, J., concurring in part and dissenting in part) (emphasis omitted). Moreover, as the prosecution conceded below, on this record, we are persuaded that the trial court should have afforded defendant an evidentiary hearing before ruling on the merits of the successive motion for relief from judgment at bar. This is particularly true given that the trial judge did not preside over defendant's joint trial with his several codefendants. See *People v Johnson*, 502 Mich 541, 568; 918 NW2d 676 (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. However, if a witness is not patently incredible, a trial court's 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 572 ("[T]he trial court judge who presided over these motions for relief from judgment was not the same judge who presided over the preliminary examination or the original trials. The trial court judge thus was functionally in the same position as an appellate court where the credibility of witnesses at the preliminary examination and the original trials was concerned.").

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[1] *People v Cress*, 468 Mich 678; 664 NW2d 174 (2003).

[2] *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963).

On remand, the trial court should hold an evidentiary hearing, then reexamine this matter on the merits. The trial court may hold any additional proceedings it deems necessary to that end.

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.

Presiding Judge

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

March 13, 2026
Date

Chief Clerk