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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant/Cross-Appellee, v HAYES BACALL, Defendant-Appellee/Cross-Appellant.	UNPUBLISHED November 25, 2026 1:22 PM No. 378809 Oakland Circuit Court LC No. 2010-233054-FC

Before: CAMERON, P.J., and MALDONADO and WALLACE, JJ.

PER CURIAM.

In this interlocutory appeal, the prosecution appeals by leave granted[1] the trial court's order dismissing the charge of first-degree murder, MCL 750.316(1)(a), against defendant. Defendant has filed a cross-appeal, challenging a separate order of the trial court denying his motion to suppress his statement. For the reasons set forth in this opinion, we affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

I. BACKGROUND AND PROCEDURAL HISTORY

This case arises from the shooting death of Saif Jameel at the BP gas station Jameel owned in Troy, Michigan, on July 2, 2010. This is the third time that this case has reached this Court. In 2011, following a 10-day jury trial, defendant was convicted of first-degree murder, MCL 750.316(1)(a), and carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b. On direct appeal, this Court affirmed defendant's convictions and sentences. *People v Bacall*, unpublished per curiam opinion of the Court of Appeals, entered March 5, 2013 (Docket No. 306269) (*Bacall I*). Defendant subsequently moved for relief from judgment in the trial court, and the trial court denied that motion, as well as the parties' joint motion for reconsideration of the

[1] *People v Bacall*, unpublished order of the Court of Appeals, entered January 27, 2026 (Docket No. 378809).

opinion and order denying that motion. After granting defendant's application for leave to appeal,[2] this Court reversed the trial court's order in a published opinion and remanded for further proceedings. *People v Bacall*, ___ Mich App ___, ___, ___; ___ NW3d ___ (2025) (Docket No. 369227) (*Bacall II*); slip op at 1, 8.

In *Bacall II*, this Court previously summarized the pertinent facts and procedural history giving rise to this appeal:

> On July 2, 2010, police received a call about gunshots being fired at a BP gas station owned by the victim. The responding officer found defendant pacing outside, talking on his cell phone, carrying a holstered gun. The officer asked what had happened, and defendant replied that he killed his nephew because the nephew owed him $400,000. Other evidence demonstrating that defendant killed the victim, including eyewitness testimony, was admitted at trial. At trial, the defense contended that defendant killed [the victim] in self-defense. [*People v Bacall*, unpublished per curiam opinion of the Court of Appeals, issued March 5, 2013 (Docket No. 306269), p 1.]

> The only eyewitness testimony at trial came from Slieman Bashi, who had known the victim and defendant for over 20 years and considered the victim to be his "very closest friend." Bashi testified that, on the day of the incident, he and the victim were sitting in the victim's office when defendant entered and began complaining about money. When the victim told defendant not to yell and attempted to stand up, defendant shot the victim. Bashi testified that the victim did not argue with defendant, reach for a gun, or touch defendant before he was shot.
>
> Defendant testified at trial. He asserted that the victim "would lose control of his patience fast." Defendant explained that he had seen the victim pull out a weapon on people before. According to defendant, the victim owed defendant money, and defendant was calling the victim often about the debt. The victim was "tough" with defendant.
>
> On the day of the shooting, defendant tried to call the victim "about 10 times" before arriving at the victim's office. After defendant entered the victim's office, the victim "jumped" up, his "eyes opened up," and "his face started changing." Defendant became "very scared" and tried to leave, but there was no room to open the office door. Defendant pulled out his gun because he "wanted to make sure that [he] would be able to leave" and that the victim would not get to him first. Defendant knew that the victim had "a lot of weapons in the office."

[2] *People v Bacall*, unpublished order of the Court of Appeals, entered July 2, 2024 (Docket No. 369227).

The victim purportedly responded to defendant, "[Y]ou're pulling your weapon on me, I'll, I'll put it in your ass," and then he tried to jump on defendant and take defendant's gun. Defendant began to shoot because he thought that the victim was going to kill him. Defendant knew that the victim had pulled out guns on people before, for no reason, and wondered what the victim would do to a person to whom he owed $400,000. The victim attempted to move toward his cabinet, and defendant continued shooting.

On cross-examination, the prosecutor asked defendant about failing to disclose a prior conviction of unlawful discharge of a firearm on his Michigan application for a concealed carry permit. Defense counsel objected, and the trial court sustained the objection.

Samir Bacall, the victim's younger brother, testified that the victim was his "best friend." Samir stated that defendant called him multiple times in the months before the shooting, saying that he was going to kill the victim because of the money that the victim owed defendant. Samir estimated that defendant mentioned harming the victim "[a]bout 10 to 15 times" between January and July 2010 and sometimes mentioned killing the victim's son to make the victim suffer. On cross-examination, Samir stated that he blamed defendant for the victim's death and confirmed that the victim carried a gun.

In closing, the prosecutor asserted that defendant changed his name and applied for a Michigan concealed pistol license, but failed to report that he had an unlawful-discharge conviction. Defense counsel again objected, reminding the trial court that it had previously sustained an objection on this issue, so there was no testimony on the matter. The trial court overruled the objection on the basis that it was closing argument. The prosecutor resumed closing and asserted that the first time that the defendant claimed self-defense was during trial, but the eyewitness testified that the victim did not touch defendant or threaten him.

After the jury was excused, defense counsel argued that the prosecutor's statement that defendant first claimed self-defense only during trial violated defendant's right to remain silent, but was also untrue. Defense counsel requested a mistrial because the prosecutor knew "that there were several taped conversations from the jail that [the prosecutor] chose not to put into evidence" during which defendant repeatedly stated that he had acted in self-defense. If the trial court would not grant the mistrial, then defense counsel requested that the trial court "correct the statement." The prosecutor responded that he was basing his argument on defendant not telling the police that he acted in self-defense. The trial court denied defendant's motion, explaining that the prosecutor's argument about self-defense "was a fair perception of the facts and testimony," and it had instructed the jury that the lawyers' arguments were not evidence.

Defense counsel also raised the issue of the prosecutor arguing that defendant lied on his concealed-carry application after the trial court had previously sustained defense counsel's objection to questioning on that issue. Defense counsel

requested that the trial court instruct the jury to disregard the statement or enter a mistrial. The trial court again found that the prosecutor's statement "was a fair commentary on the evidence."

During deliberations, the jury sent the trial court a note asking if the jury could return "a verdict of a lesser cause when they [were] unanimous even though some may feel a stronger verdict is what they believe[d]." Defense counsel asked the trial court to "answer their question just positively yes, specifically, because that is the question." The trial court suggested reading M Crim JI 3.11, and defense counsel objected to a portion of it because it would be "directing a verdict" by telling the jury to first consider first-degree murder when the jury had already decided not to convict of first-degree murder or was deliberating between first-degree murder and second-degree murder or second-degree murder and manslaughter. The trial court then read a revised version of M Crim JI 3.11 to the jury. The jury found defendant guilty of first-degree premeditated murder, with the foreperson stating that "this was not an easy decision."

On direct appeal to this Court, defendant argued, in part, that his right against double jeopardy was violated when the jury was instructed to continue deliberations after sending out its note, and that several statements made by the prosecutor during closing arguments amounted to prosecutorial misconduct. *Bacall*, unpub op at 1, 3. This Court held that the trial court properly determined that the jury had not reached a unanimous verdict when the jury did not check the box for second-degree murder on the verdict form and because the note "stated that some jurors felt that a stronger verdict *was appropriate*, but did not indicate it was deadlocked on first degree murder." *Id*. at 3. Further, comments that the prosecutor made about defendant's concealed-carry-permit application did not deny defendant a fair and impartial trial because the jury instructions explained that the prosecutor's arguments were not evidence. *Id*. at 4. The prosecutor's assertion that defendant never claimed self-defense before trial, however, was "clearly false" and "highly inappropriate," constituting misconduct for which the trial court should have provided curative instructions when so requested. *Id*. at 5. This Court concluded, however, that, considering "the overwhelming evidence which includes the testimony of an eyewitness to the shooting, defendant's statements to the police and a videotape of some of the events themselves, we conclude that the prosecutor's improper statement did not deny defendant a fair trial." *Id*.

Defendant sought a writ of habeas corpus from the U.S. District Court for the Eastern District of Michigan. The district court denied defendant's petition, but found that rational jurists could debate its resolution regarding defendant's claims on the basis of the prosecutor's statements. *Bacall v Stoddard*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued November 4, 2016 (No. 2:14-cv-13442), p 14. The U.S. Court of Appeals for the Sixth Circuit affirmed the district court's judgment, but it noted that the prosecutor's statement about defendant only first claiming self-defense at trial was false and that the "prosecutor's resurrection of the excluded concealed-carry-permit issue was also inappropriate." *Bacall v Stoddard*, 716 F Appx 502, 509-510 (CA

6, 2017). The Sixth Circuit stated that if the case were in front of it on direct review, the court "might find that a new trial was necessary." *Id*. at 510. [*Bacall II*, ___ Mich App at ___-___; slip op at 1-4 (alterations in original).]

Defendant subsequently moved for relief from judgment under MCR 6.502, claiming that his case was "replete with issues and questionable tactics from the trial prosecutor," and asserting that witnesses who had testified against him at trial had recanted their testimony. The trial court denied defendant's motion for relief from judgment.

The parties subsequently filed a joint motion for reconsideration of the trial court's opinion and order denying defendant's motion for relief from judgment. The joint motion specifically requested that the trial court grant defendant's requested relief of setting aside his conviction for first-degree murder and entering a conviction of second-degree murder. The parties stated that when defendant filed his motion for relief from judgment, the prosecution had concurred in the relief sought, but at that point had not yet provided defendant with a written report from the prosecution's Conviction Integrity Unit (CIU). In the brief in support of the joint motion, the parties stated that "Mr. Bacall was wrongfully convicted of first-degree murder." The parties further noted that, after the defense had identified recanting witnesses, the CIU investigated the matter and determined that untruthful and inaccurate testimony was introduced at defendant's trial. The CIU then determined that on the basis of the newly discovered evidence and prosecutorial misconduct at defendant's trial, defendant's conviction of first-degree murder was rendered "unjust." The parties then agreed that defendant's first-degree murder conviction should be set aside, a conviction of second-degree murder entered, and the matter scheduled for resentencing.

In *Bacall II*, ___ Mich App at ___; slip op at 4, this Court addressed the pertinent portions of the CIU investigation into defendant's case. Specifically, the Court in *Bacall II*, *id*. at ___; slip op at 4, acknowledged that the CIU had begun an investigation into this case after becoming aware of Bashi and Samir recanting their trial testimony. This Court also addressed the statements that Bashi and Samir made to the CIU during its investigation:

> Both witnesses were interviewed. Bashi told the CIU that when defendant entered the office during the incident, the victim stood up, and defendant and the victim began yelling at each other. The victim told defendant that he was going to "stick a gun up [defendant's] ass." The victim lunged at defendant and then defendant began shooting. Bashi had not spoken with defendant and nobody came to Bashi about giving a new statement. Bashi had been closer to the victim than he was with defendant. For his part, Samir told the CIU that, after the shooting, he had been very upset about his brother's death and embellished his statements because he was upset. Samir had not been honest when he said that defendant threatened to kill the victim and his son. Samir was "coming forward now" because defendant was "a good man," and Samir felt guilty about his previous statements. [*Id*. at ___; slip op at 4 (alteration in original).]

This Court in *Bacall II* also summarized the substance of Bashi and Samir's statements in their affidavits explaining their recantations:

> In his affidavit, Bashi explained that, after grieving for over 12 years, he realized that his testimony about the victim's actions "was not accurate or truthful." At the time of trial, Bashi had been "very distraught and depressed about witnessing the shooting and the killing of [his] very good friend who was inches away from [him] at that time." Bashi stated that he was not being promised anything or threatened to change his testimony. Samir explained in his affidavit that he regretted his false statements about defendant threatening the victim and his son. Samir had "deeply loved and looked up to" the victim. Samir had been mourning and wanted defendant "to pay" when he testified at trial. [*Id*. at ___; slip op at 4 (alterations in original).]

Returning to the parties' joint motion for reconsideration, on the basis of the newly discovered evidence of Bashi and Samir's recanted testimony, the prosecution and defense stated that "it would be a miscarriage of justice to permit Mr. Bacall's conviction and sentence to stand." The parties noted that the testimony of both Bashi and Samir "was central to the People's case at trial" because Bashi was the only eyewitness to the shooting and Samir laid "the foundation for the People's argument that Mr. Bacall acted with the requisite premeditation."

In the context of addressing whether the four-part test for whether a new trial may be granted on grounds of newly discovered evidence set forth in *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003),[3] had been satisfied, the parties further explained in their joint motion for reconsideration that the recanted testimony of both Bashi and Samir was of "paramount importance":

> In all, the most significant testimony at trial came from Mr. Bashi (to provide an eyewitness account of the incident) and Samir Bacall (to provide foundation to the People's theory of premeditation). The newly discovered evidence, i.e., these two witnesses provided inaccurate and/or untruthful testimony on these material issues, is of paramount importance. In fact, no revelations could be more significant in light of the People's theory of the case . . . . This newly discovered evidence is not, therefore, cumulative, and makes a different result probable on retrial. *Subtracting Mr. Bashi's version of the incident at trial that portrayed the complainant as a calm actor who was abruptly shot by Mr. Bacall* [*despite*] *having done nothing* [*to*] *incite, escalate, or otherwise provoke the shooting would materially alter the facts surrounding the incident that would be before a jury. Likewise, subtracting Samir Bacall's lengthy and repeated testimony regarding Mr. Bacall's threats to kill the complainant and his son would leave the jury with scant (if any) evidence of premeditation*. [Emphasis added.]

[3] To obtain such relief, a party must show that: "(1) the evidence itself, not merely its materiality, is newly discovered; (2) the newly discovered evidence is not merely 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).

The parties reiterated that the newly discovered evidence was relevant to key issues in the case, those being the factual circumstances of the shooting and defendant's intent, or lack thereof. The parties further requested that the trial court grant defendant a new trial, observing that "[g]iven the new information, *and what the record would likely be on retrial*," a new trial was necessary. (Emphasis added.) The parties contended that defendant had shown "good cause" under MCR 6.508(D)(3) (because defendant had no evidence of the recanted witness testimony until CIU provided it ten years after the first appeal in March 2023), and, even if that were not the case, then the "good cause" requirement should be waived as that court rule expressly permits:

> Even if Mr. Bacall could not demonstrate good cause for failure to previously raise these issues (which he has), the Court should waive that requirement *because a significant possibility exists that Mr. Bacall is innocent vis-à-vis First-Degree Murder*. [Emphasis added.]

Moreover, in the portion of their brief in support, addressing the relief they requested, the parties contended:

> The Court should not deny Mr. Bacall due process and leave in stone what is tantamount to a death sentence. Mr. Bacall's trial was replete with legal and factual issues (as recognized by the Sixth Circuit Court of Appeals) and now he presents credible evidence that the two most important witnesses testified falsely or otherwise provided inaccurate information. *These witnesses provided the sum and substance of the People's case, one offering an eyewitness account and the other establishing premeditation. Without this evidence, the People's case would crumble on retrial*. [Emphasis added.]

In a joint supplemental brief, the parties stated that "[t]his case sits at the confluence of several important controlling principles of law and ethics." The parties stated that under MRPC 3.8(f) and (g), the prosecution had an "ethical obligation" to correct a conviction when newly discovered evidence "calls a conviction into question." Such corrective action, according to the parties, included the prosecution "disclosing and investigating material evidence" and making every attempt to remedy a wrongful conviction if new evidence established a defendant's innocence. The parties also contended that the trial court had the authority under MCR 6.508 to vacate defendant's first-degree murder conviction given the newly discovered evidence of perjury by Bashi and Samir. The parties conceded that without the evidence of Bashi and Samir, the prosecution's case was no longer "sustainable because there would not be sufficient evidence to prove intent and to disprove that Mr. Bacall acted in self-defense." The parties stated that defendant had been "wrongfully convicted" of first-degree murder and asked the trial court to exercise its "ample discretion to craft an appropriate remedy." The parties proposed that before the first-degree murder conviction was vacated on the record, defendant would plead guilty to alleviate the trial court's concerns about a second-degree murder conviction being entered without defendant first pleading guilty.

The trial court held a hearing on the parties' joint motion for reconsideration on May 24, 2023, during which the prosecution relayed to the trial court the Oakland County Prosecutor's determination that a wrongful conviction occurred in this case. The prosecution stated that it was seeking entry of a second-degree murder conviction against defendant following a guilty plea

"because I don't want to be put in a position where witnesses or victims are forced to retry a case that should not be retried." The prosecution, in the context of addressing the fourth element of *Cress*, also stated, "What we have in this case is a first-degree murder conviction that hangs by a thread." The prosecution also conceded that "there was absolutely prosecutorial misconduct" at defendant's first trial and that the assistant prosecuting attorney who handled defendant's first trial "lied to the jury."

The trial court subsequently denied the joint motion for reconsideration in part because it found that a reasonable juror would not find Bashi's explanation for recanting his testimony credible on retrial. Defendant then filed an application for leave to appeal, which this Court granted. *People v Bacall*, unpublished order of the Court of Appeals, entered July 2, 2024 (Docket No. 369227).

In its brief on appeal in this second appeal, the prosecution acknowledged that it had stipulated to vacating defendant's conviction of first-degree murder "and the entry of a judgment of conviction for the lesser included charge of second degree murder *based upon the record we now know*," and that it "continue[s] to support this position." (Emphasis added.) The prosecution also observed that, following a "lengthy investigation into the circumstances surrounding the two witnesses' decision[s] to come forward, as well [as] into the evidence from the case (*including both evidence admitted at trial as well as evidence that was not presented to the jury*)," the CIU concluded "that the premeditation element of Defendant's first[-]degree murder conviction *was no longer sustainable by the evidence presented at trial*." (Emphasis added.) Noting that the Oakland County Prosecutor agreed with the CIU's assessment of the case, the prosecution joined in defendant's assertion that the trial court erred in determining that the new witness statements of Bashi and Samir "would not make a different result probable on retrial as to the premeditation aspect of the jury's verdict." It therefore requested that this Court

> remand the matter back to the Circuit Court with a direction to vacate Defendant's first-degree murder conviction and enter in its place a conviction for the lesser included charge of second-degree murder, which would reflect the jury's verdict had they not found (by relying upon the now recanted testimony) the premeditation and deliberation elements that raise a second-degree murder charge to a first-degree murder charge. Defendant's counsel has been contacted and concurs with the People's requested relief.

In *Bacall II*, this Court reversed the trial court's order denying defendant's motion for relief from judgment. *Bacall II*, ___ Mich App at ___, ___; slip op at 1, 8. This Court acknowledged that the "primary issue" on appeal was the fourth element of the *Cress* analysis, whether the newly discovered evidence of Bashi and Samir's recanted testimony made a different result probable on retrial. *Id*. at ___; slip op at 6. It further determined that the trial court erred by not considering "all of the evidence that would be admitted at a new trial to determine whether a different result would be probable." *Id*. at __; slip op at 6, citing *People v Johnson*, 502 Mich 541, 571; 918 NW2d 676 (2018), and *People v Rogers*, 335 Mich App 172, 201; 966 NW2d 181 (2020). More specifically, the *Bacall II* Court held that the trial court was required to " 'consider the evidence admitted at the original trial and *all* of the *record* evidence that has come to light to-date that could be used at the retrial.' " *Bacall II*, ___ Mich App at __; slip op at 6, quoting *Rogers*, 335 Mich App at 202. It noted that Bashi's recantation was some of the record evidence that had come to

light, even if the trial court had correctly ruled that Bashi's testimony alone was not sufficient to make a different result probable on retrial. *Bacall II*, ___ Mich App at ___-___; slip op at 6-7.

In *Bacall II*, this Court concluded that, during a new trial, Samir would no longer testify that defendant repeatedly threatened the victim and his son in the months before the shooting and "Bashi would testify that the victim lunged at defendant before defendant shot him." *Id*. at ___; slip op at 7. As this Court observed, "[t]he trial court did not make clear in its opinion that, once it had concluded that a reasonable juror could find Samir's recantation credible, it must then consider the likely effect of *both* recantations on a reasonable juror." *Id*. This Court also determined that the trial court's ruling was erroneous because the trial court did not weigh the recantation evidence "within the context of the prosecutorial misconduct that occurred in defendant's original trial." *Id*. Noting that the prosecution stipulated "to vacating defendant's first-degree murder conviction to enter a judgment of conviction of second-degree murder," this Court in *Bacall II* held that the proper remedy once it reversed the trial court's decision was to remand for a new trial. *Id*. at ___-___; slip op at 7-8.

On remand, defendant moved to dismiss the first-degree murder charge. Specifically, defendant claimed that the prosecution's statements in the joint motion for reconsideration and in its brief on appeal in *Bacall II* amounted to judicial admissions that precluded the prosecution from seeking a conviction for first-degree murder.

Defendant also filed a motion to suppress the statement he made to the first police officer on the scene following the shooting. When that officer asked defendant after the shooting, "What happened?" defendant responded, "I shot my nephew, he owes me $400,000."[4] Specifically, defendant asserted that, pursuant to *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), statements obtained during a custodial interrogation cannot be admitted at trial unless the defendant was first advised of his constitutional rights. Defendant argued that under *New York v Quarles*, 467 US 649; 104 S Ct 2626; 81 L Ed 2d 550 (1984), and *People v Attebury*, 463 Mich 662; 624 NW2d 912 (2001), the public-safety exception to the *Miranda* rule did not apply to allow for his statement's admission.

The prosecution's response to this motion to dismiss contended that, following the CIU's review of defendant's convictions and this Court's remand to the trial court for a retrial, the prosecution was not precluded from proceeding against defendant on the charge of first-degree murder. The prosecution conceded that defendant was correct in his assertion that "factual assertions in pleadings and pretrial orders are judicial admissions conclusively binding on the party who made them." However, the prosecution emphasized that it had not taken the position that defendant did not commit first-degree murder, only that "[d]efendant did not receive a fair trial on the issue and that proofs offered *at the trial* . . . in 2011 are no longer sufficient to support a conviction for first-degree murder."

The prosecution also filed its answer to defendant's motion to suppress statement in which it noted that defendant sought suppression of his statement before his first trial on the same legal

[4] This statement was admitted at trial over defendant's objections.

grounds and that, after conducting a *Walker*[5] hearing, the trial court denied that earlier motion to suppress. The prosecution also argued that the doctrine of collateral estoppel applied to bar defendant from challenging the trial court's earlier ruling. In his amended reply to the prosecution's response, defendant asserted that the doctrine of collateral estoppel should not apply to preclude litigation of the admissibility of his statement because of the "overwhelming and palpable wrongness" of the trial court's earlier decision.

A combined hearing was held on the motions. With regard to the motion to dismiss the first-degree murder charge, the trial court noted the prosecution's "strong unequivocal statements on behalf of the State of Michigan are binding judicial admissions." It further noted that, while the prosecution contended there was another witness who was not presented at trial who could offer testimony supporting defendant's premeditation for purposes of the first-degree murder charge, in their report, the CIU indicated that it went outside the trial record in their investigation to recommend that the first-degree murder conviction be set aside and that justice required entry of a conviction for second-degree murder" and that the prosecutor's office agreed. Following the hearing, the trial court granted defendant's motion to dismiss the first-degree murder charge and denied his motion to suppress.

The prosecution subsequently moved for reconsideration of the trial court's ruling dismissing the first-degree murder charge against defendant. It contended the prosecution "did not have a chance to inform the Court of new evidence showing that defendant premeditated the murder—evidence that was not in the CIU's possession when the prosecution earlier stipulated to vacate defendant's conviction," including information from the victim's widow that Samir Bacall purportedly had a financial motive to recant his trial testimony, including two phone call recordings, and a witness who did not testify at the trial, Sufyan Bacall, who could "supply premeditation evidence." Defendant's response observed that the trial court made no "obvious mistakes" in granting defendant's motion to dismiss the first-degree murder charge, and that it did so with "full knowledge that the prosecution believed itself to be in possession of evidence beyond that which had been presented at the trial of the case—evidence of the same character as it now urges as a basis for reconsideration of that decision." The response additionally noted that the transcripts of the phone call indicate that the speaker identified as "Samer" repeatedly *denies* receiving money to change his testimony or that, in recanting his testimony, he is not providing the truth as to what occurred.

The trial court entered an opinion and order denying the prosecution's motion for reconsideration of the opinion and order dismissing the first-degree murder charge. It noted that Sufyan Bacall, who did not testify at the trial, and who the prosecution claimed could provide "evidence that Defendant threatened to kill the victim in the months before the shooting," was known to the prosecution when it filed the joint motion for reconsideration and took the position that the first-degree murder conviction should be vacated and the plaintiff would plead to second-degree murder, and that this witness was interviewed by the CIU and has no information that is new to the prosecution. It further noted the prosecution's indication that it had the telephone recordings in its possession since July 2025, at the latest, but failed to mention that evidence (or

[5] *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965).

the Sufyan Bacall potential testimony) in its October 8, 2025 response to plaintiff's motion to dismiss the first-degree murder charge. It also found the telephone call transcripts provide no compelling reason for it to reconsider its dismissal decision where they are somewhat hard to follow and, while they could be read to indicate that the speaker changed his testimony because the victim's widow was treating him badly, "Samer" also "states that his new testimony is truthful and repeatedly denies recanting his testimony in exchange for money." The trial court based its denial on its "discretion on a motion for reconsideration to decline to consider new legal theories or evidence that could have been presented when the motion was initially decided," *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012), and the prosecution's failure to show the court's palpable error in its decision on the motion to dismiss.

On December 4, 2025, defendant pleaded no contest to the charges of second-degree murder, MCL 750.317, and felony-firearm, MCL 750.227b, and the case was adjourned for sentencing. The trial court denied the prosecution's motion to stay the proceedings.

The prosecution subsequently filed its application for leave to appeal in this Court. This Court granted the application for leave to appeal "limited to the issues raised in the application and supporting brief." *People v Bacall*, unpublished order of the Court of Appeals, entered January 27, 2026 (Docket No. 378809). This Court also granted the prosecution's motion to stay the proceedings. *Id*. Defendant filed a cross-appeal from the trial court's October 16, 2025 order denying his motion to suppress his statement.

II. JUDICIAL ADMISSIONS

On appeal, the prosecution asserts that the trial court erred by dismissing the charge of first-degree murder against defendant on the basis of the prosecution's judicial admissions. We agree.

A. PRESERVATION OF ISSUE

For an issue to be preserved for this Court's review, it must be raised in the trial court. *People v Heft*, 299 Mich App 69, 78; 829 NW2d 266 (2012). On appeal, the prosecution contends that (1) its earlier statements made in the trial court and this Court were not judicial admissions, (2) the trial court dismissing the first-degree murder charge was error under the law-of-the-case doctrine, and (3) it is within the executive authority of the prosecution to determine whether to charge a person and what charges to file. Defendant claims that the myriad arguments that the prosecution now raises in support of its claim of error are not preserved for this Court's review. We disagree.

As the prosecution observes in its brief on appeal, in filing its response to defendant's motion to dismiss, the prosecution raised for the trial court's consideration a clear challenge to defendant's request to have his first-degree murder charge dismissed under the doctrine of judicial admissions. As long as the issue presented to the trial court is not unusual, a party may "make a more sophisticated or fully developed argument on appeal than was made in the trial court." *Glasker-Davis v Auvenshine*, 333 Mich App 222, 228; 964 NW2d 809 (2020). In the trial court, the prosecution vigorously opposed defendant's attempt to have the charge of first-degree murder set aside and therefore acted reasonably to bring the issue to the trial court's attention. *Id*. In doing

so, the prosecution reasoned that it had the authority to review the evidence and determine which charges, if any, were to be pursued against defendant.

Accordingly, we are satisfied that the issue whether the trial court had the authority to dismiss the first-degree murder charge against defendant was sufficiently presented to the trial court to allow the court to make a proper ruling.

B. STANDARD OF REVIEW

This Court reviews for an abuse of discretion a trial court's decision on a motion to dismiss charges against a defendant. *People v Brown*, 330 Mich App 223, 229; 946 NW2d 852 (2019). When the trial court makes an error of law it necessarily abuses its discretion. *Id*. Likewise, whether the law-of-the-case doctrine is applicable is a question of law that this Court reviews de novo. *People v Zitka*, 335 Mich App 324, 332; 966 NW2d 786 (2020). "Whether a violation of the separation of powers doctrine has occurred is a question of law that this Court reviews de novo." *Fieger v Cox*, 274 Mich App 449, 463-464; 734 NW2d 602 (2007) (quotation marks and citations omitted).

C. ANALYSIS

In the context of a civil case, the Michigan Supreme Court has stated that, "a statement made by a party or his counsel, in the course of trial, is considered a binding judicial admission if it is a distinct, formal, solemn admission made for the express purpose of, *inter alia*, dispensing with the formal proof of some fact at trial." *Ortega v Lenderink*, 382 Mich 218, 222-223; 169 NW2d 470 (1969).[6] The Court has additionally, similarly defined judicial admissions as "formal concessions in the pleadings in the case or stipulations by a party or its counsel that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420; 551 NW2d 698 (1996), quoting 2 McCormick, Evidence (4th ed), § 254, p 142. The effect of a judicial admission is that it conclusively establishes the facts at issue and relieves the opposing party of the need to provide evidence to prove such facts. *Radtke*, 453 Mich at 420. This Court has also recognized that an admission by a party on a point of law is not binding on a court and cannot be used for the defense of estoppel. *Mich Health Care, Inc v Flagg Indus, Inc*, 67 Mich App 125, 130; 240 NW2d 295 (1976).[7] While defendant relies upon holdings from the above-referenced civil cases, he cites to

[6] In *Ortega*, 382 Mich at 222, the plaintiff argued that the defendant's testimony and the comments of defense counsel at trial regarding the distance of the defendant's vehicle from a crosswalk amounted to binding judicial admissions. The issue in that case was whether the trial court erred by not instructing the jury that the defendant had parked his truck within 20 feet of a crosswalk and was therefore negligent as a matter of law. *Id*. at 221. Under Michigan law, it was illegal to park a vehicle within 20 feet of a crosswalk. *Id*.

[7] In *Mich Health Care*, 67 Mich App at 127, the plaintiff pursued a breach of contract action against the defendant, and the defendant asserted that the plaintiff was estopped from pursuing that action because it had, in a previous equitable action, argued that the contract at issue was void *ab initio*.

no authority applying the concept of judicial admissions to a criminal case nor does he offer any such analysis.

In the trial court, defendant urged the court to dismiss the first-degree murder charge against him on the basis of the prosecution's judicial admissions regarding the viability of its first-degree murder prosecution and argues on appeal that this Court should affirm the trial court's dismissal order on that basis. However, even if we accept defendant's contention that this Court should apply the reasoning of the above-referenced civil cases regarding judicial admission to this matter, we find that the prosecution was not proffering "a distinct, formal, solemn admission" with the stated purpose of dispensing with the formal proof of the relevant fact at trial when it conceded that it could not obtain a first-degree murder conviction without the evidence of premeditation provided by Samir and Bashi's version of what occurred. *Ortega*, 382 Mich at 222-223. Notably, the prosecution did not indicate that it could not *ever* produce evidence to establish the element of premeditation necessary to sustain a conviction of first-degree murder. Instead, the prosecution merely acknowledged that, in light of the recantations of Bashi and Samir, the proofs it offered at defendant's first trial would not support a finding of premeditation and instead would bolster defendant's contention that he acted in self-defense. On retrial, the prosecution still bears the onus of presenting evidence to allow the jury to find that defendant acted with premeditation. Similarly, on retrial, defendant would have the opportunity to present evidence that he did not act with premeditation. Therefore, the present facts do not present a scenario in which the prosecution made a binding judicial admission regarding the lack of evidence of the element of premeditation or defendant's guilt of first-degree murder.

Our decision on this issue is consistent with this Court's decision in *Bacall II*, in which we held that the proper remedy here is a remand for a new trial:

> Our caselaw provides that when a trial court grants a motion for relief from judgment on the basis of newly discovered evidence, retrial, rather than dismissal, is the appropriate remedy. Should a trial court grant a motion for relief from judgment, the case would be remanded for retrial, not dismissal. [*Bacall II*, ___ Mich App at ___; slip op at 7-8 (quotation marks, brackets, and citations omitted).]

In the present appeal, defendant once again seeks to have this Court affirm dismissal of the first-degree murder charge, despite this Court's prior ruling that a remand for a new trial is the appropriate remedy. *Id*. Accordingly, we reverse the trial court's order dismissing the charge of first-degree murder in this case. Because we have reversed the trial court's order, we need not address the other issues raised by the prosecution.

III. SUPPRESSION OF DEFENDANT'S STATEMENT

On cross-appeal, defendant argues that the trial court erred by denying his subsequent motion to suppress his statement on the basis of the doctrine of collateral estoppel. Defendant argues that, at the time he made the statement at issue, he was in custody and the scene had been secured, meaning that the trial court erred in finding that the public safety exception to *Miranda* permitted the introduction of the statement as evidence. We disagree.

A. STANDARD OF REVIEW

This Court reviews the issue whether the doctrine of collateral estoppel is applicable de novo. *People v Ali*, 328 Mich App 538, 542; 938 NW2d 783 (2019). A trial court's admission of evidence is reviewed for an abuse of discretion. *People v Muhammad*, 326 Mich App 40, 47; 931 NW2d 20 (2018).

B. ANALYSIS

In *Ashe v Swenson*, 397 US 436, 443; 90 S Ct 1189; 25 L Ed 2d 469 (1970), the United States Supreme Court recognized that although the doctrine of collateral estoppel was first introduced in the context of civil litigation, it has been applied in the context of criminal cases since the Court's earlier decision in *United States v Oppenheimer*, 242 US 85; 37 S Ct 68; 61 L Ed 161 (1916). See also *People v Brown*, 279 Mich App 116, 126; 755 NW2d 664 (2008) (recognizing that "[t]he doctrine of collateral estoppel applies to criminal cases"). In *Brown*, this Court explained the circumstances under which the doctrine of collateral estoppel is applicable:

> Collateral estoppel bars relitigation of an issue in a subsequent, different litigation between the same parties where the prior proceeding culminated in a valid, final judgment and the issue was both actually litigated and necessarily determined. Collateral estoppel only applies if the issue was necessarily determined by the judgment in the prior proceeding. An issue is necessarily determined only if it is "essential" to the judgment. Collateral estoppel applies only where the basis of the prior judgment can be ascertained clearly, definitely, and unequivocally.[8] [*Brown*, 279 Mich App at 126 (quotation marks and citations omitted), quoting *Peope v Gates*, 434 Mich 146, 158; 452 NW2d 627 (1990).]

This Court has also set forth the following requirements for invoking the doctrine of collateral estoppel:

> Generally, for collateral estoppel to apply three elements must be satisfied: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel. [*Law Offices of Jeffrey Sherbow, PC v Fieger & Fieger, PC*, 347 Mich App 533, 554; 15 NW3d 356 (2023), quoting *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004).]

In 2011, before his first trial, defendant filed a motion to suppress his statement to the first police officer on the scene following the shooting and the prosecution filed a response. During the suppression hearing, defense counsel extensively cross-examined that police officer, Officer Stopczynski, and presented lengthy arguments to the trial court asserting that the public-safety

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[8] In *Law Offices of Jeffrey Sherbow, PC v Fieger & Fieger, PC*, 347 Mich App 533, 554; 15 NW3d 356 (2023), this Court held that collateral estoppel may "arise in the context of a single cause of action."

exception did not permit introduction of defendant's statement into evidence. Therefore, the record confirms that the parties fully litigated before the court the issue of whether Officer Stopczynski's question to defendant about "[w]hat happened," and defendant's response, fell within the public-safety exception to *Miranda*. The trial court also determined the relevant questions of fact and ultimately held that the public-safety exception was applicable.

Moreover, the record indicates that the trial court's 2011 ruling admitting defendant's statement was not an abuse of discretion. At the *Walker* hearing, which lasted over five hours, the trial court heard extensive testimony from three witnesses and admitted eight exhibits into evidence. Officer Stopczynski testified that he went right to the subject gas station after receiving a dispatch call indicating shots had been fired there. Upon arrival, he saw defendant standing near the rear of a pickup truck, talking on his cell phone, with a gun holstered "on his right hip area." Officer Stopczynski testified that he was one of the first officers to arrive on the scene, was not aware of how many shooters might have been involved, did not know how many people were injured, and identified defendant as matching the description he had been given of a person involved in the incident. Because of the nature of the dispatch call, Officer Stopczynski identified defendant as a threat. He ordered defendant at gunpoint to put away the cell phone, put his hands up, and lay on the ground; and defendant complied. Officer Stopczynski then handcuffed defendant and took possession of defendant's firearm. After he then allowed defendant to stand up, the first question Officer Stopczynski asked was "[w]hat happened?" Defendant response, which is the subject of this cross-appeal, was: "I shot my nephew; he owes me $400,000.00." Regarding that moment, Officer Stopcynski testified that he was attempting to secure the scene because he and the other officers did not know if there were other suspects waiting inside the gas station. The trial court held that the statement was admissible under the public safety exception to *Miranda* because the officer was attempting to secure the scene of the shooting. We agree.

The United States Supreme Court has held that there is a public safety exception to the requirement that a *Miranda* warning must be given to a suspect before their answers may be admitted into evidence and that the availability of that exception does not depend upon the inquiring officer's motivation. *New York v Quarles*, 467 US 649, 655-656; 104 S Ct 2626; 81 L Ed 2d 550 (1984). This exception applies to questions asked by an officer that are reasonably prompted by a concern for public safety. *Id*. at 656. In the present case, in which the officer at the scene has just disarmed a suspected shooter and is attempting to ascertain whether additional shooters might be present, we cannot hold that the trial court abused its discretion by holding that defendant's statement is admissible under the public safety exception to *Miranda* because the officer's question was reasonably prompted by a concern for public safety.[9]

[9] Indeed, any police officer who arrives at the scene of a shooting, apprehends an armed suspect, and reasonably believes there may be an additional shooter, is not required to provide *Miranda* warnings to the suspect before asking questions to ascertain whether there is another shooter on the premises.

Accordingly, we are satisfied that the trial court correctly concluded that the doctrine of collateral estoppel was applicable and that defendant's statement was admissible under the public safety exception to *Miranda*.

IV. CONCLUSION

We affirm the trial court's October 16, 2025 order denying defendant's motion to suppress his statement. We reverse the trial court's October 16, 2025 order dismissing the charge of first-degree murder and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado
/s/ Randy J. Wallace