

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JON W. GUMBLE,

Defendant-Appellant.

UNPUBLISHED

May 2, 1997

No. 191372

Oakland Circuit Court

LC No. 86-075225

AFTER REMAND

Before: McDonald, P.J., and Griffin and Bandstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of voluntary manslaughter, MCL 750.321; MSA 28.553 and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). While his appeal of right was pending defendant filed a motion with this Court for new trial based on newly discovered evidence. After appealing this Court's denial of his motion our Supreme Court ordered the matter decided on the merits or remanded to the trial court for the motion for new trial. The matter was remanded to the trial court. Subsequently, again by order of our Supreme Court, this Court decided the merits of defendant's appeal and in an unpublished opinion affirmed defendant's conviction. *People v Gumble*, unpublished opinion per curiam of the Court of Appeals, issued 08/25/95, Docket No. 131623. Defendant's motion for new trial was later heard and denied by the trial court. The motion was based on newly discovered evidence, an apparent confession by Jerry Wayne Mayberry and a statement by Kelly Ridenour given to the police, both which allegedly corroborated defendant's story he accidentally shot his roommate because he thought the roommate was an armed robber. Defendant now appeals from the denial of his motion. We remand for an expanded evidentiary hearing and further factfinding.

On appeal, defendant argues his motion for a new trial was improperly denied because there was sufficient newly discovered evidence to warrant a new trial.

We review a trial court's denial of a motion for new trial for an abuse of discretion. *People v Hubbard (After Remand)*, 217 Mich App 459, 472; 552 NW2d 593 (1996). Pursuant to MCR 2.611(A)(1)(f), a new trial may be granted if there is newly discovered evidence. To merit a new trial on this basis, a defendant must show the evidence (1) is newly discovered, (2) is not merely cumulative,

(3) would probably have caused a different result, and (4) was not discoverable and producible at trial with reasonable diligence. *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993).

A review of the hearing and court's findings leads us to conclude the court acted prematurely in denying the motion. We disagree with the prosecutor's contention the evidence was not newly discovered or was discoverable and producible at trial with reasonable diligence. *People v Davis*, 199 Mich App 502; 503 NW2d 457 (1993). It is true defendant consistently maintained Mayberry and another individual, Billy Beaumont were involved in an armed robbery of his home on the night of the murder. Nonetheless, contrary to the prosecutor's assertions, it would not have benefited defendant's case to call either man at trial because both denied involvement at that time. It is not the fact defendant alleges these men were involved in the murder that is newly discovered. Instead it is the later confession suggesting their involvement that constitutes new evidence. Nor do we believe the evidence was merely cumulative. The evidence constituted direct support of defendant's theory of defense and was not presented by other means during trial. *People v Machura*, 25 Mich App 481; 517 NW2d 797 (1994).

The more difficult question is whether introduction of Mayberry's confession would probably have caused a different result. Although we are generally skeptical of confessions made by prison inmates who seemingly have nothing to lose by confessing to a crime committed by another, we note in this case Mayberry was informed before giving the confession that implicating himself in the robbery could result in his prosecution for felony-murder and a resulting prison sentence of life without the possibility of parole.

Nonetheless, were this the only "new evidence" proffered by defendant we would not be able to say the court abused its discretion in denying the motion. However, defendant also offers the discovery of a statement made by Kelly Ridenour, Beaumont's former girlfriend, to the police. In this statement Ridenour informed the police Beaumont told her he and Mayberry robbed defendant's home using masks and a gun and that she was shown the masks. The trial court appears to have determined Ridenour's statement was not corroborative of defendant's theory because Beaumont allegedly told her he shot the victim and this version conflicts with defendant's position he shot the victim believing him to be one of the robbers. We do not believe this conflict in the stories renders Ridenour's statement unconvincing or incredible. It is not uncommon for offenders to brag and exaggerate about offenses committed. In fact it is often an offender's description of his crime to another that helps lead the police to the offender. We cannot say Mayberry's confession supported by Ridenour's statement may not have lead to a different outcome at trial without a better record of Ridenour's proposed testimony. This is especially true in light of the fact the jury convicted defendant of the lesser crime of manslaughter rather than the charged crime of second degree murder. However, because it was never determined below whether defendant was in possession of Ridenour's statement prior to trial or the exact nature of the proposed testimony by Ridenour, we remand for a full evidentiary hearing on the newly discovered evidence in which Ridenour is to be called to testify.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Richard Allen Griffin
/s/ Richard A. Bandstra