

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DARRYL JAMUAL WOODS,

Defendant-Appellee.

UNPUBLISHED

November 16, 2004

No. 249036

Wayne Circuit Court

LC No. 90-003929

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARIO HENDERSON,

Defendant-Appellee.

No. 249037

Wayne Circuit Court

LC No. 90-003539

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted the orders granting defendants' motions for relief from judgment. We reverse. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Defendants were convicted by jury of felony murder, multiple assault charges and possession of a firearm during the commission of a felony in connection with the shootings of Anthony Capers and Cecil Brewington in an attempted drug-related robbery. This Court affirmed defendants' convictions on appeal. Defendants moved for relief from judgment, asserting that newly discovered evidence from one witness and recanting testimony from another witness undermined the convictions. After conducting an evidentiary hearing, the trial court granted defendants' motions.

This Court reviews a trial court's decision on a motion for judgment relief for an abuse of discretion. *People v Ulman*, 244 Mich App 500, 508; 625 NW2d 429 (2001). The trial court may not grant a motion for judgment relief if the motion alleges grounds for relief, other than

jurisdictional defects, which could have been raised on appeal or in a prior motion, unless the defendant demonstrates good cause for failing to raise such grounds before, and demonstrates actual prejudice from the alleged irregularities. MCR 6.508(D)(3)(a) and (b). In a conviction following a trial, “actual prejudice” means that “but for the alleged error, the defendant would have had a likely chance of acquittal.” MCR 6.508(D)(3)(b)(i).

The court failed to apply the good cause requirement in granting defendants’ motions for judgment relief. The defendants did not raise this issue in their prior appeal because Charles Kemp had yet to recant his testimony and they apparently were not aware that Willie Thomas was present just before and after the shooting. Assuming that this is sufficient to meet the good cause requirement, the issue is whether defendants sufficiently demonstrated prejudice to warrant a new trial.

For a new trial to be granted on the basis of newly discovered evidence, a defendant must demonstrate: (1) the evidence 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. *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003). However, when newly discovered evidence is in the form of a recanting witness who testified at the original trial, our courts have traditionally regarded this evidence as suspect and untrustworthy. *People v Canter*, 197 Mich App 550, 559; 496 NW2d 336 (1992). In reviewing whether the trial court abused its discretion in deciding the motion for a new trial, this Court generally must defer to the trial court’s superior opportunity to appraise the credibility of the witnesses. *Id.* at 560.

The trial court failed to assess the substance of the new testimony and review the evidence from the trial to determine whether the testimony would probably have made a different result probable. A review of the trial testimony shows that the new testimony would not have changed the outcome of the trial, in light of the statements given by each defendant. Woods admitted that he shot Cecil Brewington, which was contrary to the testimony given by Kemp that Woods was not armed with a weapon and did not shoot anyone. Henderson’s account directly contradicted Kemp’s account that he arrived separately with Woods; instead, Henderson stated that Woods went inside the house first, came back, and then all four of them went inside the house. Although both witnesses also provided impeachment testimony with respect to Brewington, it was only related to a collateral point on Brewington’s direct involvement in selling drugs and whether he knew Charles Kemp before the shooting. In addition, the tape-recorded phone conversations between Kemp and others prior to the motion hearing call his credibility into question. Because the new evidence would not affect the outcome of the trial, the court abused its discretion in granting the motions for relief from judgment. *Ulman, supra*.

Reversed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski