

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERALD ALAN SHORT,

Defendant-Appellant.

UNPUBLISHED

October 25, 2007

No. 266368

Kent Circuit Court

LC No. 05-000708-FH

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

HOEKSTRA, P.J., (*concurring in part; dissenting in part*).

Although I agree with the majority opinion in all other respects, I respectfully disagree that on the record before us we can dispose of defendant's claim that he is entitled to a new trial on the basis of newly discovered evidence. Rather, even though I agree with the majority that two of the factors necessary for a new trial are satisfied on the record before us, see *People v Johnson*, 451 Mich 115, 118 n 6; 545 NW2d 637 (1996), I conclude that the case should be remanded to the trial court for a hearing to address whether defendant should have discovered the evidence before trial and the effect the new evidence may have had on the outcome. The record before us is silent regarding how this evidence came to the defendant's attention after trial and what efforts, if any, were made prior to trial to investigate the reliability of the jail house snitch's testimony. Thus, there is nothing in the record before this Court to support the majority's conclusion that the evidence could have been discovered and produced at trial with reasonable diligence. Additionally, I believe the trial court, who observed the witnesses' testimony, particularly the victim and defendant, is better able to evaluate the impact that undermining the credibility of the snitch's testimony may have had on the outcome of the trial than we are on the cold record before us.

/s/ Joel P. Hoekstra