

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

L. C. BROWN,

Defendant-Appellant.

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UNPUBLISHED

April 2, 1999

No. 191146

Recorder's Court

LC No. 94-010112 FC

Before: Saad, P.J., and Kelly and Bandstra, JJ.

KELLY, J. (dissenting).

I respectfully dissent. I cannot join this opinion because the record on which this defendant was convicted is implicated by the shadow of a repudiation of eyewitness testimony recently presented to this Court in the form of an affidavit which was the subject of a motion to remand entertained by this panel. The majority denied remand in an order entered November 10, 1998, to which I dissented. I believe the affidavit of Terrance Jamal Dawson requires investigation and an evidentiary hearing in the trial court, for if that affidavit is found credible, the eyewitness testimony on which this defendant was convicted is patently perjurious.

In a word, the witness testified at trial that he saw the shooter and the shooter was defendant. In his later affidavit, he states his testimony was false and given at the request and behest of Susan Kulczyk, the decedent's live-in girlfriend. From my review of this record, Ms Kulczyk's testimony was very, very suspect even without the cloud cast upon it by Dawson's affidavit. Kulczyk originally told the police that Dedrich O'Neal, the former neighbor and sworn enemy of the victim, was the shooter. She said O'Neal drove past the house that she and the victim lived in the day before the shooting and yelled at Jimmy Robinson, the victim, "I'll bring my bitch back to pop you . . ." Later that evening, O'Neal drove past her house twice and the next day at one o'clock p.m. appeared across the street with a gun. She gave a statement to homicide officer Paul Thomas the very day of the shooting in which she identified the shooter as O'Neal and made no mention of another individual. She gave a second statement to the police in which she introduced another version and another shooter. She said the other shooter was a relative of O'Neal's and described him as thirty with a slim build standing at about six feet. She was shown a photo array one week after the shooting in which this defendant's photo was

contained and she failed to pick him out.<sup>1</sup> She testified that she had never seen L. C. Brown, this defendant, until the day of the shooting. She later contradicted that statement and said she had seen him cross the street after a different shooting of a man named Paco. This was the subject of a motion for mistrial which was later denied.

In view of the very shaky testimony of Susan Kulczyk, I emphatically disagree with the majority's characterization that the evidence against the defendant was overwhelming. Defendant had an alibi. Defendant had numerous witnesses available to corroborate the alibi that he was the cook at a family reunion on July 31, 1994. His alibi was corroborated by Christopher McClure, a deputy sheriff and Sheila Brown who both were at that family reunion with defendant.<sup>2</sup> Further, defendant was not arrested until approximately one month after the shooting. Thus, supporting his alibi that he was not at the scene of the shooting. This is not a case of overwhelming evidence, this is a close case.

I cannot bring myself to affirm this jury verdict which may have been obtained on perjured testimony and, therefore, I dissent.

I would remand for an evidentiary hearing in the trial court to test the validity of the affidavit of Terrance Jamal Dawson and if it is determined to be accurate, reverse this conviction and grant a new trial at a minimum.

/s/ Michael J. Kelly

<sup>1</sup> At the time of the photo array line-up, the officers administering the line-up said that since Kulczyk did not pick defendant out, she could come in for a live line-up when he was brought into custody. Later, Kulczyk did, in fact, pick defendant out at a live line-up.

<sup>2</sup> Deputy McClure stated that while he wasn't sure exactly when defendant was present at the reunion, he did recall seeing defendant at the reunion. Sheila Brown stated that she, in fact, did see defendant at the reunion at approximately the same time as the shooting.