George Gerald Rider-Bey, 155733
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI 48446

July 1, 2026

Office of the Clerk
Macomb County Circuit Court
40 North Main Street, 1st Floor
Mt. Clemens, MI 48043

RE: File No. 2017-003420-FC
Hon. Joseph Toia
People v. Rider-Bey

Dear Clerk of the Court,

Please file the enclosed pleadings in the above titled case. Please notice one original and one copy marked "JUDGE'S COPY" have been filed with this Honorable Court, and that the Macomb County Prosecutor has been served one copy as evidenced by the enclosed PROOF OF SERVICE.

Should you have any questions or concerns, or require any clarification regarding this filing, please do not hesitate to contact me at the above address.

Thanking you in advance for your time and consideration in this matter, I remain.

Respectfully yours,

George G. Rider Bey

George Gerald Rider-Bey

cc: Macomb County Prosecutor
File
Encl.

STATE OF MICHIGAN

IN THE MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

File No. 2017-003420-FC
Hon. Joseph Toia

-vs-

GEORGE GERALD RIDER-BEY
Defendant.
_____/

PROOF OF SERVICE

NOW COMES, George Gerald Rider-Bey, Defendant in pro per, and affirms that on July 1, 2026, one copy of Defendant's Motion to Enforce Court Order with Memorandum of Law Incorporated Therein, along with supporting EXHIBITS, was served on the Macomb County Prosecutor's Office by placing same in the mail, first class postage fully prepaid to the following address:

Macomb County Prosecutor
1 South Main Street, 3rd Floor
Mt. Clemens, MI 48043

Under the penalty of perjury, I declare that the statements above are true to the best of my information and knowledge.

Respectfully submitted,

George G. Rider Bey

Dated: July 1, 2026

George Gerald Rider-Bey
155733
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI 48446

STATE OF MICHIGAN
IN THE MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

File No. 2017-003420-FC
-vs- Hon. Joseph Toia

GEORGE GERALD RIDER-BEY,
Defendant.
_____/

MOTION TO ENFORCE COURT ORDER
WITH
MEMORANDUM OF LAW INCORPORATED THEREIN

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STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction to adjudicate the ISSUE presented herein on the merits pursuant to MCL 600.611. and specifically MCR 6.508(D)(3)(b)(iii) and (iv), to correct a manifest injustice.

STATEMENT OF QUESTION PRESENTED

ISSUE

DID THE PROSECUTOR COMPLY WITH THIS COURT'S ORDER OF JULY 22, 2024 TO PROVIDE A COPY OF THE OATH AND AFFIDAVIT OF DETECTIVE BOZEK TO DEFENDANT?

Defendant answers "NO"
The Prosecution DID NOT comply
This Honorable Court has yet to enforce its Order of July 22, 2024

INTRODUCTION

Defendant presents this Motion to Enforce this very Court's Order dated July 22, 2024, which is attached as EXHIBIT "1." In that Order, this Court stated at page 2 as follows:

> "The Court also requests that the Prosecuting Attorney provide a copy of the any oath and affidavit prepared by Detective Bozek. ... Until all matters are resolved, this case remains OPEN."

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Defendant adopts the Statement of Facts and Procedural History as stated in his Motion for Relief from Judgment. Defendant will only add those facts as it pertains to this instant Motion.

ISSUE PRESENTED BEFORE THIS HONORABLE COURT FOR ADJUDICATION ON THE MERITS

ISSUE

THE PROSECUTOR DID NOT COMPLY WITH THIS COURT'S ORDER OF JULY 22, 2024, TO PROVIDE A COPY OF THE OATH AND AFFIDAVIT OF DETECTIVE BOZEK

STANDARD OF REVIEW

The standard of review is found in People v. Matish, 21 Mich App 238, 240; 175 NW2d 348 (1970), where the Court held that, "Courts have the inherent right and power to enforce obedience to their orders and decrees. MCL 600.1701." Moreover, in People v. Norman, 183 Mich App 203, 206-207; 454 NW2d 393 (1989), the Court held, "When a court issues an order and that order is violated, the case returns to the court for enforcement."

ARGUMENT

The Prosecution filed a response on September 23, 2024, but never complied with this Court's Order of July 22, 2024, to supply a

copy of the oath and affidavit of Detective Bozek.

Three (3) days later, on September, 26, 2024, this Court rendered an Opinion and Order attached as EXHIBIT "2." In that decision, this Court did not compel the Prosecutor to comply with its Order, nor explain why the Prosecutor did not comply. Instead, this Court, in conjunction with the Prosecutor, completely circumvented Defendant's request and this Court's Order of July 22, 2024.

What ensued was an action condemned in Griffin v. Warden, Md. Corr. Adjustment Center, 970 F.2d 1355 (4th Cir. 1992), where the Court, relying on Kimmelman v. Morrison, 477 U.S. 365, 386-387, 106 S.Ct. 2574, 91 L.Ed2d 305 (1986), held:

> "Courts should not conjure up tactical decisions an attorney could have made, but plainly did not. ... Tolerance of tactical miscalculations is one thing; fabrication of tactical excuses is quite another." Id., at 1359.

When this Court sided with the Prosecution, it conjured up a ruling that impermissibly rendered a decision of an argument that was never proffered by the Defendant. Parker v. Lane, 688 F.Sup 353, 357 (N.D. Il1, 1988), holding that a Court cannot rewrite a Defendant's pleadings and then rebut allegations the Defendant never made. The Parker Court continued, "Whatever the merit of the Court's contentions as an abstract point of law, they have nothing to do with the issues presented." See also, Rogers v. Detroit Police Dept., 595 F.Supp2d 757, 766 (E.D. Mich. 2009), holding same.

It should be noted that this Court's Opinion and Order dated September 26, 2024, also stated at page 13:

> "This Opinion and Order resolves the last pending claim and CLOSES the case."

The Court's closing of this action is of no consequence.

Defendant relies on the case of Washington-Detroit Theatre Co. v. Moore, 249 Mich 673; 229 NW 618 (1930), where the Court held:

> "Every court has inherent power to enforce its judgments and decrees, and to make such orders and issue such process as may be necessary to render them effective, and this power is not affected by the fact that the decree is final." Id., at 682.

CONCLUSION

Defendant submits that even though he has presented a bona fide issue before this Honorable Court, much of the argument herein revolves around the fact that it involves both on- and off-record facts, and which requires an Evidentiary Hearing to make a record pursuant to the mandate espoused in People v. Ginther, 390 Mich 436, 443-444; 212 NW2d 922 (1973) and People v. Ford, 417 Mich 66, 113; 331 NW2d 878 (1982). Defendant further asserts that this Evidentiary Hearing is necessary because without it, the reviewing Courts will decline to address the ISSUE at all under, People v. Whyte, 165 Mich App 409, 415; 418 NW2d 484 (1988).

Defendant further asserts that it is incumbent on this Honorable Court to resolve disputed facts to address the undisclosed hidden facts in this case. See, Abdur'Rahman v. Bell, 226 F.3d 696, 706 (6th Cir. 2000), holding that a court may order an evidentiary hearing to settle disputed issues of material fact. See also, Banks v. Dretke, 540 U.S. 668, 690-691, 124 S.Ct. 1256, 1272, 137 L.Ed2d 1166, 1189 (2004), holding same.

Defendant makes this request to comport with the mandates of Keeney v. Tamayo-Reyes, 504 U.S. 1, 11-12, 112 S.Ct. 1715, 1721, 118 L.Ed2d 318 (1992), Williams v. Taylor, 529 U.S. 420, 430, 120 S.Ct. 1479, 1488, 146 L.Ed2d 435 (2000) and Byrd v. Collins, 209 F.3d 486,

515 (6th Cir. 2000), which all stand for the proposition that should the State Courts deny Defendant of an evidentiary hearing to complete the existing record, then he may request the Federal Courts to conduct the requisite hearing.

As such, Defendant respectfully requests this Honorable Court will conduct the appropriate Evidentiary Hearing pursuant to MCR 6.507(A) and MCR 6.508(C), and order the simultaneous appointment of Counsel under MCR 6.505(A) to represent and protect Defendant's Constitutional rights in that proceeding.

RELIEF REQUESTED

WHEREFORE, for all of the aforementioned arguments, and as supported by well-settled authority, Defendant respectfully prays this Honorable Court will:

1. Accept Defendant's Motion to Enforce Court Order with Memorandum of Law Incorporated Therein and supporting EXHIBITS as timely and properly filed,

2. Adjudicate the ISSUE presented on the merits, or,

3. Conduct an Evidentiary Hearing under MCR 6.507(A) and MCR 6.508(C) to resolve any and all disputed facts, should this Court deem it necessary, and to,

4. Simultaneously appoint Counsel under MCR 6.505(A) to represent Defendant in that proceeding, and/or,

5. Grant any and other relief this Honorable Court deems just and appropriate.

Under the penalty of perjury, Defendant declares that the statements above and the supporting EXHIBITS presented herein, are true to the best of his information and knowledge.

Respectfully submitted,

George G. Rider Bey

Dated: July 1, 2026

George Gerald Rider-Bey
155733
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, MI 48446

STATE OF MICHIGAN

IN THE MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

-vs-

File No. 2017-003420-FC
Hon. Joseph Toia

GEORGE GERALD RIDER-BEY,
Defendant.
_____/

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EXHIBIT 1 - This Court's Order dated July 22, 2024

EXHIBIT 2 - This Court's Opinion and Order dated September 26, 2024

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs. Case No. 2017-3420-FC

GEORGE GERALD RIDER,

Defendant.
_____/

ORDER

Defendant George Gerald Rider ("Defendant") has filed motions for a post-conviction *Brady*[1] hearing, post-conviction *Franks*[2] hearing, post-conviction *Ginther*[3] hearing, and for relief from judgment pursuant to MCR 6.500, *et seq*. Pursuant to MCR 6.501, "a judgment of conviction and sentence entered by the circuit court not subject to appellate review under subchapters 7.200 or 7.300 may be reviewed only in accordance with the provisions of [MCR 6.500]." Here, Defendant's time for filing an appeal has expired. Thus, Defendant's sole recourse is a motion for relief from judgment. Accordingly, the Court will only address Defendant's motion for relief from judgment.

In his motion for relief from judgment, Defendant requests an evidentiary hearing and new trial pursuant to MCR 6.500 and asserts that his appellate counsel was ineffective for failing to raise the following arguments on appeal:

> I. He was denied his constitutional rights of due process and discovery where the prosecution committed a *Brady* violation by withholding the oath and affidavit that led to the issuance of a warrant in violation of the Michigan Rules of Evidence and *Brady*.

[1] *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 215 (1963).
[2] *Franks v Delaware*, 438 US 154; 98 S Ct 2674; 57 L Ed 2d 667 (1978).
[3] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

EXHIBIT 1

II. Prosecutorial misconduct where the prosecution knowingly withheld information about the oath given to the magistrate and knew that the oath of Detective Daniel Bozek contained false statements.

III. He was entitled to a *Franks* hearing to determine the veracity of Detective Bozek's statements in the oath and affidavit since the fraudulent and defective warrant led to his illegal arrest.

Lastly, Defendant argues that he is entitled to relief from judgment because the Michigan Supreme Court violated his constitutional rights under Article 6, Section 6 of the Michigan Constitution by failing to provide him with a concise statement of facts in the denial of his application for leave to appeal.

Pursuant to MCR 6.504(B)(4) and MCR 6.506, the Court hereby orders the Prosecuting Attorney to file a response to Defendant's arguments contained in his motion for relief from judgment within 60 days of this Order. The Court also requests that the Prosecuting Attorney provide a copy of the any oath and affidavit prepared by Detective Bozek. *See* MCR 6.504(B)(1). Until all matters are resolved, this case remains OPEN. MCR. 2.602(A)(3).

IT IS SO ORDERED.

COUNTY OF MACOMB · STATE OF MICHIGAN

HON. JOSEPH TOIA, CIRCUIT COURT JUDGE

Dated: July 22, 2024
Cc: Attorneys of record - via eservice.

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs. Case No. 2017-3420-FC

GEORGE GERALD RIDER,

Defendant.

_____/

OPINION AND ORDER

Defendant George Gerald Rider ("Defendant") has filed motions for a post-conviction *Brady*[1] hearing, post-conviction *Franks*[2] hearing, post-conviction *Ginther*[3] hearing, and for relief from judgment. Defendant has also filed a motion for summary disposition and default judgment.

Factual and Procedural History

In this case, Defendant was found guilty following a jury trial of first-degree premeditated murder, contrary to MCL 750.316(1)(a). On July 31, 2019, Defendant was sentenced to life imprisonment without parole. On August 7, 2019, Defendant appealed his conviction. On appeal, Defendant asserted three arguments. First, Defendant argued that his phone was illegally seized because there was no warrant authorizing the seizure and no exception to the warrant requirement applied. Defendant also argued that his counsel was ineffective for failing to argue that the warrant did not authorize the seizure of the phone. Second, Defendant argued that the prosecutor impermissibly argued facts not in evidence. Third, Defendant argued that his due process rights

[1] *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 215 (1963).
[2] *Franks v Delaware*, 438 US 154; 98 S Ct 2674; 57 L Ed 2d 667 (1978).
[3] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

EXHIBIT 2

were violated when the trial court erroneously admitted a text message into evidence. Fourth. Defendant argued that the trial court abused its discretion by admitting evidence of text messages.

The Michigan Court of Appeals denied Defendant's appeal as to all issues except ineffective assistance of counsel. See *People v Rider*, unpublished per curiam opinion of the Court of Appeals, issued August 18, 2022 (Docket No. 350096). The Court of Appeals found that defense counsel did not provide effective assistance by taking the position that the warrant authorized the seizure and remanded the case for an evidentiary hearing to determine whether defense counsel's deficient performance had a reasonable probability of affecting the outcome of Defendant's trial. *Id.* On remand, this Court found that the exigent-circumstance exception to the warrant requirement applies and that Defendant was thus unable to establish that his defense counsel's deficient performance had a reasonable probability of affecting the outcome of the trial. On June 1, 2023, the Court of Appeals affirmed this Court's findings. See *People v Rider*, unpublished per curiam opinion of the Court of Appeals, issued June 1, 2023 (Docket No. 350096). On April 29, 2024, the Michigan Supreme Court denied Defendant's application for leave to appeal.

On June 25, 2024, Defendant filed his instant motions for a post-conviction *Brady* hearing, post-conviction *Franks* hearing, post-conviction *Ginther* hearing, and for relief from judgment. Defendant's arguments relate to the truthfulness of an oath and affidavit sworn by Detective Daniel Bozek, which led to the issuance of his arrest warrant. On July 22, 2024, the Court entered an Order finding that Defendant's sole recourse is a motion for relief from judgment and that the Court will only address Defendant's motion for relief from judgment. The Court ordered the People to file a response to Defendant's motion for relief from judgment. On September 23, 2024, the People filed a response in opposition to Defendant's motion. On September 26, 2024,

Defendant filed a motion for summary disposition and default judgment arguing that the People failed to file a response as ordered by the Court.

Arguments

In his motion for relief from judgment. Defendant requests an evidentiary hearing and new trial pursuant to MCR 6.500. Defendant first asserts that his appellate counsel was ineffective for failing to raise the following arguments on appeal:

> I. He was denied his constitutional rights of due process and discovery where the prosecution committed a *Brady* violation by withholding the oath and affidavit that led to the issuance of a warrant in violation of the Michigan Rules of Evidence and *Brady*.
>
> II. Prosecutorial misconduct where the prosecution knowingly withheld information about the oath given to the magistrate and knowing that the oath of Detective Bozek contained false statements.
>
> III. He was entitled to a *Franks* hearing to determine the veracity of Detective Bozek's statements in the oath and affidavit since the fraudulent and defective warrant led to his illegal arrest.

Defendant also argues that he is entitled to relief from judgment because the Michigan Supreme Court violated his constitutional rights under Article 6, Section 6 of the Michigan Constitution by failing to provide him with a concise statement of facts in the denial of his application for leave to appeal. In his motion to summary disposition and for a default judgment. Defendant contends that the People's failure to file a response equates to an admission of his arguments.

In response. the People contend that Defendant's appellate counsel was not ineffective because counsel is not required to raise every arguably meritorious issue and used strategy and discretion to select the most meritorious arguments on appeal. The People maintain that Defendant's arguments are without merit because the lawfulness of the arrest warrant does not affect Defendant's trial.

Law & Analysis

Motion for Relief from Judgment

A defendant in a criminal case may move to set aside or modify a judgment. MCR 6.502(A). If it is plainly apparent that the defendant is not entitled to relief, the court must deny the motion without directing further proceedings. MCR 6.504(B)(2). If the court does not dismiss the entire motion, it must order the prosecution "to file a response as provided in MCR 6.506, and shall conduct further proceedings as provided in MCR 6.505-6.508." MCR 6.504(B)(4). The court, after reviewing the motion, response, record, and any record expansion, must then decide whether an evidentiary hearing is required. MCR 6.508(B). If the Court decides that an evidentiary hearing is not required, it may rule on the motion for relief from judgment or afford the parties an opportunity for oral argument. *Id.* If the court decides that an evidentiary hearing is required, it shall schedule and conduct a hearing. MCR 6.508(C).

A defendant has the burden to establish entitlement to relief. MCR 6.508(D). In a motion for relief from judgment, if an issue was not but could have been raised in a prior appeal, the defendant must show good cause for the failure to raise the issue and actual prejudice from the alleged error. MCR 6.508(D)(3)(a) and (b). "Good cause" can be established by proving ineffective assistance of counsel. *People v Kimble*, 470 Mich 305, 314; 684 NW2d 669 (2004). However, the Court may waive the "good cause" requirement of subrule (D)(3)(a) if it concludes that there is a significant possibility that the defendant is innocent of the crime. MCR 6.508(D)(3).

In the case of a conviction following a trial, "actual prejudice" means that "but for the alleged error, the defendant would have had a reasonably likely chance of acquittal." MCR 6.508(D)(3)(b)(i)(A). Actual prejudice can also be established if the defendant can show that the irregularity was so offensive to the maintenance of a sound judicial process that the conviction

should not be allowed to stand regardless of its effect on the outcome of the case. MCR 6.508(D)(3)(b)(iii).

Ineffective Assistance of Counsel

To prevail on a claim of ineffective assistance of counsel, the defendant must show that "(1) the performance of his counsel was below an objective standard of reasonableness under prevailing professional norms and (2) a reasonable probability exists that, in the absence of counsel's unprofessional errors, the outcome of the proceedings would have been different." *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

To prove the first prong, "[t]he defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy." *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). "This Court does not second-guess counsel on matters of trial strategy, nor does it assess counsel's competence with the benefit of hindsight." *People v Russell*, 297 Mich App 707, 716; 825 NW2d 623 (2012). "Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy." *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Regarding the second prong, a defendant is prejudiced if there is a reasonable probability that, "but for defense counsel's errors, the result of the proceeding would have been different." *People v Hefi*, 299 Mich App 69, 81; 829 NW2d 266 (2012).

"[T]he test for ineffective assistance of appellate counsel is the same as that applicable to a claim of ineffective assistance of trial counsel." *People v Uphaus*, 278 Mich App 174, 186; 748 NW2d 899 (2008). The defendant must "overcome the presumption that his appellate counsel's decision constituted sound strategy." *Id.*, citing *People v Riley (After Remand)*, 468 Mich 135, 140; 659 NW2d 611 (2003). Further, "[a]ppellate counsel may legitimately winnow out weaker

arguments in order to focus on those arguments that are more likely to prevail." *Uphaus*, 278 Mich App at 186-187, citing *People v Reed*, 449 Mich 375, 391; 535 NW2d 496 (1995).

I. *Brady* Violation

Defendant contends that the warrant that led to his arrest was issued based on the fraudulent and perjurious testimony of Detective Bozek. Defendant contends that the prosecution failed to reveal to the defense that an oath or supporting affidavit existed and failed to turn over the oath to the defense. Defendant states that he hired a private investigator who was able to locate and obtain the warrant but not the supporting affidavit. *See* Defendant's Attachment A, Affidavit of Scott Lewis Mischnick. However, Defendant presents the February 22, 2017 hearing transcript of a hearing to authorize Defendant's arrest warrant held in the 37th District Court. *See* Defendant's Attachment B, February 22, 2017 hearing transcript. Defendant asserts that if he had been provided with the oath and affidavit he would have had an avenue at trial to challenge the facts alleged.

In *Brady*, the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 US at 87. "[T]he components of a 'true *Brady* violation' are that: (1) the prosecution has suppressed evidence; (2) that is favorable to the accused; and (3) that is material." *People v Chenault*, 495 Mich 142, 150; 845 NW2d 731 (2014).

Here, the Court finds that Defendant fails to establish that the prosecution suppressed evidence. Defendant's arrest warrant was issued following a February 22, 2017 hearing to authorize the warrant in the 37th District Court. *See* Defendant's Attachment B, February 22, 2017 hearing transcript. The District Court orally heard the sworn statements of Detective Bozek and

found that probable cause had been established. *Id.* Pursuant to MCR 6.102(B), "[a] finding of probable cause may be based on hearsay evidence and rely on factual allegations in the complaint, affidavits from the complainant or others, the testimony of sworn witnesses adequately preserved to permit review, or any combination of these sources." Defendant fails to establish that the prosecution was required to provide a transcript of the hearing.

Regardless, as argued by the People, "a court's jurisdiction to try an accused person cannot be challenged on the ground that physical custody of the accused was obtained in an unlawful manner." *People v Muhammad*, 326 Mich App 40, 72; 931 NW2d 20 (2018), citing *People v Burrill*, 391 Mich 124, 133; 214 NW2d 823 (1974). "There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." *Burrill*, 391 Mich at 133-134 (quotation marks and citation omitted). Thus, irrespective of whether there were errors associated with the warrant, Defendant is not entitled to relief. *Muhammad*, 326 Mich App at 72. Accordingly, the Court finds that Defendant's appellate counsel was not ineffective for failing to argue that the prosecution failed to reveal or turn over the testimony of Detective Bozek.

II. Prosecutorial Misconduct

Defendant contends that the prosecution knowingly withheld information about the oath and affidavit of Detective Bozek, which prevented him from having a fair trial. Defendant also contends that the prosecution knew that the oath and affidavit of Detective Bozek contained lies and false statements. Defendant argues that the fact that the prosecution did not call Detective Bozek, the lead detective on his case, as a witness during trial supports his argument that the prosecution sought to hide Detective Bozek's statements.

In *People v Gratsch*, 299 Mich App 604, 619-620; 831 NW2d 462 (2013), vacated in part on other grounds, 495 Mich 876; 838 NW2d 686 (2013), the Court summarized the following principles that govern a defendant's claim of prosecutorial misconduct premised on the purported introduction of false evidence:

> A defendant's right to due process guaranteed by the Fourteenth Amendment is violated when there is any reasonable likelihood that a conviction was obtained by the knowing use of perjured testimony. Accordingly, the prosecution has an obligation to correct perjured testimony that relates to the facts of the case or a witness's credibility. When a conviction is obtained through the knowing use of perjured testimony, a new trial is required only if the tainted evidence is material to the defendant's guilt or punishment. So, whether a new trial is warranted depends on the effect the misconduct had on the trial. The entire focus of the analysis must be on the fairness of the trial, not the prosecutor's or the court's culpability.

Here, there is no evidence that the prosecution attempted to hide Detective Bozek's testimony at the February 22, 2017 hearing. Defendant also fails to establish that Detective Bozek's testimony was false or, more importantly, that the prosecution knew of any false statements of Detective Bozek. Additionally, there is no evidence Detective Bozek's testimony was material to Defendant's guilt. But, again, even assuming that the testimony of Detective Bozek contained false statements inadequate to justify the issuance of the arrest warrant. Defendant has no right to relief. See *People v Muhammad*, 326 Mich App 40, 72; 931 NW2d 20 (2018); *People v Burrill*, 391 Mich 124, 133; 214 NW2d 823 (1974). Accordingly, the Court finds that appellate counsel was not ineffective for failing to raise prosecutorial misconduct based on the prosecution's failure to disclose the testimony of Detective Bozek.

III. *Franks* Hearing

Defendant contends that the oath and affidavit of Detective Bozek contains fraudulent and perjurious language. Defendant argues that the following statements testified to by Detective

Bozek during the February 22, 2017 hearing to authorize the warrant were not supported by any evidence:

> 1) On January 13, 2017, George G. Rider and Eric Gibson drove together driving a rented Nissan Pathfinder to the parking lot of LA Fitness, located at 30195 Mound.
>
> 2) Eric Gibson enters the same Nissan Pathfinder, and...both George Rider and Eric Gibson drive away.
>
> 3) Further, investigation supports that Marcie Griffin...solicited George Rider, who then enlisted Eric Gibson to carry out the execution of Julii Johnson.
>
> 4) Through cell phone forensics we can connect the link between George Rider and then link back to Eric Gibson. Further, text messages support that she paid an unknown fee to have this done. *See* Defendant's Attachment B, February 22, 2017 hearing transcript.

Under *Franks*, a defendant is constitutionally entitled to an evidentiary hearing to attack the veracity of a warrant affidavit when the defendant offers a "substantial preliminary showing" that the affiant allegedly acted with "deliberate falsehood or [with] reckless disregard for the truth..." *Franks*, 438 US at 171.

Defendant asserts that there is no evidence that he was ever in the Nissan Pathfinder. Defendant also asserts that there is no evidence that he enlisted Eric Gibson to commit a crime or that he knew Marcie Griffin. Instead, Defendant states that it was his brother, Lawrence Rider-El, who was an acquaintance of Marcie Griffin. Defendant provides affidavits of Amir A. Rider, Gloria J. Ray, and himself. *See* Defendant's Attachment C, affidavits. In his affidavit, Amir Rider states that he is the son of Gloria and Defendant. *Id.* at Affidavit of Amir Rider. Amir states that Defendant drove him to school everyday leaving their home around 7:00-7:15 a.m. *Id.*

In her affidavit, Gloria Ray states that she would rent several cars during 2016-2017 as part of her job with Midtown Entertainment Group, LLC overseeing the renovation of the Fine Arts Theater for individuals working on the renovations. *Id.* at Affidavit of Gloria Ray. She states that

Eric Gibson was an associate of her son Anthony Brown and would frequently work on the renovation project and had access to the vehicles. *Id.* She states that Lawrence Rider would also work on the renovations project and told her that he left one of the cars at her house on February 3, 2017. *Id.* She states that "the phone contained several cell phones that were used by the various employee's during the renovation." *Id.* She states that Lawrence Rider told her that he signed an affidavit and gave it to Defendant's attorney stating that he had the cell phone on January 13, 2017 but was never called as a witness. *Id.*

In his affidavit, Defendant states that there were five cell phones available for the workers during the remodeling of the theater. *Id.* at Affidavit of Defendant. He states that he assisted with managing the contractors and laborers. *Id.* He states that he knows Eric Gibson but that he does not know Marcie Griffin. *Id.* He states that his brother, Lawrence Rider-El, had been seeing Ms. Griffin. *Id.*

Lastly, Defendant argues that there is no evidence that links him to the cell phone ending in 4616 on January 13, 2017. Defendant states that his brother had possession of that phone on that date. *Id.* In support of his statements, Defendant presents the affidavit of his brother, Lawrence Rider-El. *See* Defendant's Attachment D, Affidavit of Lawrence Rider-El. In his affidavit, Lawrence states that he met Ms. Griffin approximately nine years ago. *Id.* He states that he was in possession of the cell phone owned by Midtown Entertainment Group with the number ending in 4616 from January 9, 2017 through January 17, 2017 and sent a text message to Ms. Griffin at approximately 9:15 a.m. on January 13, 2017. *Id.* He states that he was put on the witness list at Defendant's trial but was never called to testify. *Id.*

In his instant motion, Defendant does not argue that he was denied effective assistance of counsel due to counsel's failure to call a witness. Instead, Defendant argues that the Court should

hold a hearing to determine the truthfulness of Detective Bozek's testimony during the February 22, 2017 hearing. However, Defendant fails to establish that the testimony of Detective Bozek contained intentionally false or misleading information or was made with reckless disregard for the truth. See *Franks*, 438 US at 155-156. Further, even if the arrest warrant was determined to be void, Defendant fails to establish that he was denied a fair trial based on the testimony of Detective Bozek to obtain the warrant. See *People v Muhammad*, 326 Mich App 40, 72; 931 NW2d 20 (2018); *People v Burrill*, 391 Mich 124, 133; 214 NW2d 823 (1974). "An illegal arrest does not preclude the prosecutor from bringing a prosecution." *People v Spencley*, 197 Mich App 505, 508; 495 NW2d 824 (1992). Consequently, the Court finds that appellate counsel was not ineffective for failing to argue that trial counsel should have filed a motion for a *Franks* hearing.

Violation of Michigan Constitution

Defendant asserts that he raised seven issues on appeal to the Michigan Supreme Court. The Michigan Supreme Court denied his application for leave to appeal, stating:

> On order of the Court, the motions to amend appellate issues and for immediate consideration are GRANTED. The application for leave to appeal the August 18, 2022 and June 1, 2023 judgments of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motions to stay appellate proceedings, for correction of opinion, to remand to the trial court, and for miscellaneous relief are DENIED.

Article 6, Section 6 of the Michigan Constitution states:

> Decisions of the Supreme Court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of facts and reasons for each decision and reason for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.

Here, Defendant fails to provide any legal authority that he is entitled to relief from judgment based on his argument that the Michigan Supreme Court was required to provide him a concise statement of facts when denying his application for leave to appeal. Nonetheless, it is

"standard practice for our Court to deny applications because "we are not persuaded that the question(s) presented should be reviewed by this Court." *People v Labelle*, 509 Mich 1030; 974 NW2d 555, 564 n 18 (2022) (CAVANAGH, J. concurring). "This standard denial order language presumably satisfies this Court's obligation under Const 1963, art 6, § 6 to provide 'a concise statement of the facts and reasons' for each denial of leave to appeal." *Id.* As a result, the Court finds Defendant's argument regarding violation of Const 1963, art 6, § 6 without merit.

Motion for Summary Disposition and Default Judgment

Defendant contends that the People's failure to file a response as ordered by the Court must be deemed an admission of his arguments. The Court's July 22, 2024 Order ordered the Prosecuting Attorney to file a response to Defendant's arguments contained in his motion for relief from judgment within 60 days of the Order. Thus, the deadline for the filing of the response was Friday, September 20, 2024. The Court received the People's response on Monday, September 23, 2024. Defendant cites to several cases, including *People v Hammond*, 187 Mich App 105, 107; 446 NW2d 335 (1991), which states that the Court, in the exercise of discretion, may deem the failure of an appellee to file a brief or otherwise defend an appeal to be a confession of error.

However, Defendant fails to cite to any authority indicating that the Court must find in his favor due to the People filing a response on the next business day after the deadline set by the Court. The cases cited by Defendant indicate that the Court may use its discretion when a party fails to defend an appeal. Here, the Court finds that the People's filing of its response on September 23, 2024 does not require the Court to deem all of Defendant's arguments admitted to by the People. Thus, in its discretion, the Court considered the People's arguments and further relied on the law pertaining to Defendant's arguments. Even without a response from the People, the Court finds that Defendant's motion for relief from judgment must be denied.

Conclusion

For the reasons stated above, Defendant's motion for relief from judgment is DENIED and Defendant's motion for summary disposition and default judgment is DENIED. Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last pending claim and CLOSES the case.

IT IS SO ORDERED.

COUNTY OF MACOMB STATE OF MICHIGAN

HON. JOSEPH TOIA, CIRCUIT COURT JUDGE

Dated: September 26, 2024

Cc: Attorneys of record - via eservice.
Defendant – via regular mail at Saginaw Correctional Facility