

Motion for New Trial was held on May 22, 2024. The Court makes the following Findings of Fact.

II. FINDINGS OF FACT

On February 2, 2007, Earwin Watters was interviewed by the FBI and Assistant United States Attorney Joseph Pinjuh at the United States Attorney's Office for the Northern District of Ohio in Cleveland. Mr. Watters's counsel, William McGinty, was present during this interview. Mr. Watters was incarcerated at the time on federal charges for conspiracy to traffic crack cocaine with more than 40 other individuals. *See U.S. v. Watters*, Case No. 1:06-cr-00594-DDD (N.D. Ohio June 22, 2011). During this interview, FBI agents asked Mr. Watters if he had information about a number of unsolved homicides in Cleveland. One of the homicides that the FBI asked Mr. Watters about was the murder of Antonio Williams. Mr. Watters indicated that he was familiar with the circumstances surrounding the death of Mr. Williams and recalled being at the scene when Mr. Williams was being shot at. The FBI then contacted the Cleveland Police Department to inform the detective investigating Mr. Williams's death of Earwin Watters' statements.

On February 11, 2008, the Court held a hearing to voir dire the identification witnesses that the State planned to call during the trial: Earwin Watters and Debby Crayton. Mr. Watters' counsel, William McGinty, was present during the voir dire of Mr. Watters. (Tr. 196.)

Mr. Watters testified that he had met the assistant prosecutor trying Defendant's case, Blaise Thomas, for the first time the previous week at the sheriff's detective bureau. (Tr. 196.) He also testified during the witness voir dire that the first time he provided information regarding the shooting of a person named Cocoa, also known as Antonio Williams, was to the FBI working

his pending federal case and then during an interview with Cleveland Police. (Tr. 196-97; 204.) He testified that he made a proffer in the presence of his attorney, Mr. McGinty, to Special Agent Williams of the FBI with the hope of obtaining a benefit at the time of his sentencing in the pending federal matter for providing information to the State in this matter. (Tr. 208.) He also testified he understood that the State, namely Mr. Thomas, would have a conversation with the Assistant U.S. Attorney prosecuting his pending federal case regarding the quality and degree of his testimony in this matter and that the federal government would make its own determination as to what potential benefit or reduction he would receive at the sentencing in his federal case. (Tr. 208.)

On this same day, the case proceeded to trial with a jury impaneled and sworn. During the trial, the State called nine witnesses, including Earwin Watters, Debby Crayton, and Detective Timothy Entenok.

At trial, Mr. Watters testified that, on November 11, 2006, he went into Papi's, a store at the intersection of East 71st Street and Hecker Avenue in Cleveland. (Tr. 612.) As he walked into Papi's, he observed the Defendant standing next to a parked car. (Tr. 614-615.) On that day, Mr. Watters had known Defendant for approximately seven years and had interacted with him on more than a few occasions. (Tr. 619.) When Mr. Watters was inside the store purchasing cigarettes, he heard screeching tires and a gunshot. (Tr. 616.) He looked out the door of the store and saw a car turning the corner and the Defendant chasing after the car on foot while pointing his hand towards the car. (Tr. 616-17.) Mr. Watters then heard two more gunshots and ran in the opposite direction. (Tr. 617-18.)

Mr. Watters also testified regarding why he waited to tell the authorities what he witnessed on the day of the shooting. He explained that he was arrested in January 2007 on federal charges for conspiracy to distribute crack cocaine and that his case was currently pending. (Tr. 608-09.)

He stated that he did not get involved with the matter when it happened, but when he became incarcerated for the federal charges, he was questioned by the FBI regarding his knowledge of homicides in Cleveland. (Tr. 618; 620-22.) It was at that point in time that he decided to inform the authorities regarding what he saw the day of the shooting of Antonio Williams. (Tr. 621.) After informing the FBI, he later spoke with the Cleveland police investigating the shooting. He relayed to the Cleveland police detectives what he had told the FBI. (Tr. 621-22.) He also identified the Defendant from a photo array created by the Cleveland police. (Tr. 622.)

Mr. Watters testified that neither of the assistant prosecutors, Michael Graham or Blaise Thomas, had promised him anything or told him what to say in court. He also stated that he did not want to be testifying in this matter. (Tr. 623.) He stated that he understood that he could still go to prison in his federal case even though he was cooperating in this matter. (*Id.*) On cross-examination by Defendant's counsel, Mr. Watters admitted that testifying in this matter was likely to help him in his federal case. (Tr. 627.) He also admitted that his sentence could potentially be reduced in his pending federal case by many months for cooperating in this matter. (Tr. 628.)

Debby Crayton testified that on November 11, 2006, while she was in her house on East 71st Street in Cleveland, she heard gunshots coming from Hecker Street while she was in her bathroom. (Tr. 735; 741-42.) She then looked out the window and saw the Defendant running down Hecker Street towards East 71st Street with a gun in his hand while he stated "that's what you do for motha [f*****]." (Tr. 743-44; 751; 753-54.) A few moments later she saw Defendant's car speeding away from the scene. (Tr. 755.) Ms. Crayton had known Defendant for ten years before she saw him on November 11, 2006. (Tr. 738.)

Right after the incident, Ms. Crayton then called 911. (Tr. 756.) She spoke to a Cleveland police officer that day at her house and told him she saw Defendant running with a gun. (Tr. 758.)

She later spoke with a Cleveland Police homicide detective, provided him with her statement regarding the incident, specifically named Defendant as the individual she witnessed running down Hecker Street with a gun in his hand on November 11, and identified Defendant from a photo array. (Tr. 759-60.) She also identified Defendant in court during the trial. (Tr. 744.)

Detective Entenok testified that on February 6, 2007, he and the other homicide detective investigating the matter learned that there was another witness to the murder of Antonio Williams. (Tr. 899-900.) FBI Special Agent Doug Williams contacted the detective and informed him that while he was conducting a federal investigation into Watters, he found out that Mr. Watters had information on the homicide of Antonio Williams. (Tr. 900.) Detective Entenok and another homicide detective then spoke with Mr. Watters on February 21, 2007 in the presence of Special Agent Doug Williams. (Tr. 900-01.) During that meeting, Mr. Watters identified Defendant from a photo array that Detective Entenok had established and provided information regarding him witnessing Mr. Williams being shot at by Defendant. (Tr. 900-903.)

The Cleveland Police Department recovered a nine millimeter Ruger from Defendant on November 21, 2006, (Tr. 849.), after a five-hour standoff between S.W.A.T. and Defendant. (Tr. 133.) Based on forensic analysis, Defendant's nine millimeter Ruger was found to have fired the spent shell casing on Hecker Avenue on November 11, 2006, after the victim was shot at multiple times. (Tr. 822-23; 826; 849; 876-80.)

On February 15, 2008, the jury found Defendant not guilty of Aggravated Murder, but guilty of the lesser-included offense of Murder, in violation of R.C. 2903.02, as well as the 3-year firearm specification as charged. On March 7, 2008, Defendant was sentenced to 18 years to life and was fined Twenty Thousand Dollars (\$20,000).

Defendant filed a notice of appeal, arguing, among other things, that his murder conviction was based on insufficient evidence and against the manifest weight of the evidence. On July 2, 2009, the Eighth District affirmed Defendant's conviction. *See State v. Martin*, 2009-Ohio-3282 (8th Dist.). When dismissing Defendant's argument that his conviction was not supported by reliable evidence and that the eyewitnesses who identified him as the shooter lacked credibility, the Eighth District stated the following:

Watters testified that his federal sentence may be decreased by approximately 30 months based upon his testimony in this case. Appellant argues Watters only revealed information regarding the shooting when he was arrested on federal charges and had something to gain. However, Watters only provided this information when he was approached and specifically questioned. Watters had known appellant for seven years and identified him in a photo array. Watters explained that he did not come forward when the incident happened because he did not want to become involved.

While it is true that Watters may receive a reduced federal sentence based on up his testimony, Watters had not been guaranteed anything for his testimony. Further, the jury heard the testimony regarding the possible deal, and it was not unreasonable for them to believe Watter's testimony in spite of this. Waters was able to provide the jury with a detailed account of the incident.

...

While there are some inconsistencies in Crayton's statements, it is not unreasonable for the jury to have believed her. She witnessed the shooting from her window. She knew appellant and immediately recognized him as the shooter. . . .

Id. ¶¶ at 34-35, 37.

On October 24, 2023, Defendant filed a Motion for New Trial claiming newly discovered exculpatory evidence of a recanting eyewitness, Earwin Watters. Defendant attached multiple affidavits completed by Earwin Watters; exhibits pertaining to Watters' federal prosecution, conviction, and sentence; numerous police reports; an email from Assistant Prosecutor Blaise

Thomas to Assistant United States Attorney Joseph Pinjuh regarding Watters' trial testimony; Watters' federal plea agreement; affidavits from Timothy Entenok, Blaise Thomas, and Michael Graham; and a written statement from Debby Crayton.

Earwin Watters' three affidavits state that he wasn't anywhere near the area where this incident took place in 2007. He states that he was approached by homicide detectives who knew he lived in the area and pressured him to testify for the prosecution in exchange for leniency on his federal case.

In Earwin Watters' affidavits dated March 5, 2015 and March 16, 2016, he states that "I went along with what the prosecutor told me to say, which was that I witnessed Juwan Martin, chasing a car firing shots, which was not true, I have never seen him do nothing and only testified to what they told me to say and was afraid."

Earwin Watters received a lighter sentence in his federal case due to his testimony in the present case.

The email from Assistant Prosecutor Blaise Thomas to Assistant United States Attorney Joseph Pinjuh regarding Watters trial testimony stated, "Mr. Watters testified for the State of Ohio in the above matter with the understanding that the State of Ohio could not promise or recommend what legal benefit, if any, he would receive from the government for the United States of America." The email also states, "[a]s the lead trial attorney for the State of Ohio in this matter, I am satisfied with the cooperation given by Mr. Earwin Watters in the trial of the State of Ohio vs. Jojwan Martin, CR-06-490688."

Defendant states that there is no accusation that Cleveland Police or the Prosecutor's Office made promises to Watters about his pending federal prosecution or that they intentionally induced

Watters to lie. (Motion p. 11) However, Watters' potential federal sentence of a life term was a powerful incentive to testify.

Defendant argues that Debby Crayton's testimony at trial was inconsistent and therefore given Watters' recantation, there is a strong possibility that a new trial would not result in a conviction.

Defendant states that the recantation affidavit could not have been discovered at the time of trial and it is not cumulative, or merely impeach or contradict existing evidence.

The State filed a response to the Motion for New Trial arguing that Watters' recantations are not credible. The State argued that if the recantations were to be believed, multiple law enforcement agencies were in collusion with each other to convict Jojwan Martin. The State claims that no promises or inducements were made to obtain Watters' testimony.

The State further claims that the second eyewitness, Debby Crayton, has not changed her story, and her testimony puts Defendant at the scene of the crime with a gun in his hand. While there are minor inconsistencies in Crayton's testimony, they are not substantive.

The State further argues that Defendant cannot show that without Watters' testimony, Defendant would not have been convicted.

On May 22, 2024, a hearing on the Motion for New Trial was held. Defendant called Earwin Watters to testify. The State called Detective Timothy Entenok to testify.

A. Hearing Testimony of Earwin Watters

Earwin Watters was assigned counsel and testified at the hearing. Watters testified that he had federal charges and was approached by state law enforcement officers who asked if he had information about the murder in question. (Tr. 15.) Watters testified that he did not have

information about it. (Id.) Watters testified that the detectives showed him a picture of Jojwan Martin, who was like family and a friend. (Tr. 16-17) Watters testified that the detectives told him that Martin had something to do with a murder and they wanted to put him behind bars. (Tr. 17-18.) Watters testified that the detectives wanted him to testify in the murder trial and say that he saw something, but he didn't actually see anything. (Tr 18.) Watters testified that he did not see the shooting and did not see Martin fire a weapon. (Tr 19.) Watters testified that he only testified at the trial because the federal agents said they would do everything to keep him behind bars if he didn't cooperate. (Tr. 20.) Watters testified that in exchange for his cooperation at trial, he had 250 months cut off his potential sentence. (Tr. 23.) He received 60 months, but only did 36 months in prison. (Tr. 26.)

Watters testified that he completed affidavits because he wanted to come forward and "set this man free for something that he – he didn't do." (Tr. 25.)

On cross-examination Watters read portions of his trial testimony from pages 614-617 and 633 that described the murder in detail. (Tr. 30-35.) Watters read that on the day of the murder he went to Papi's and saw Martin standing next to a parked car. (Tr. 30.) Watters testified that this was a lie, he wasn't there at all. (Tr. 31.) Watters read that he put a sticky note on a map indicating where the car was. (Id.) Watters testified that the location of the sticky note was a lie. (Tr. 32.) Watters read that he purchased a pack of cigarettes and heard tire marks as he was giving the clerk money. (Id.) Watters testified that this was a lie. Watters read that he saw a car pulling off real fast and heard a gunshot and saw the car turning the corner and a guy chasing it and saw two more gunshots. (Tr. 32-33.) Watters testified that this was a lie. (Tr. 33.) Watters read that Jojwan was chasing the car with his hand pointed toward it. (Id.) Watters testified that this was a lie. (Id.) Watters read that he saw flashes and heard gunshots and he jogged home. (Tr. 33-34.) Watters

testified that this was a lie. Watters read that Jojwan was running after the car and was about two feet away from the rear bumper. (Tr. 35.) Watters testified that was a lie.

Watters further testified that no one gave him the details he testified to at trial, he made it all up. (Tr. 34.)

B. Hearing Testimony of Detective Timothy Entenok

Detective Timothy Entenok testified at the hearing. He testified that he was assigned to investigate the homicide of Antonio Williams and was notified by Special Agent Doug Williams of the FBI that a federal inmate had information about it. (Tr. 41-42.) Entenok testified that he met with Special Agent Williams at the federal courthouse to question Watters. (Tr. 44.) Entenok testified that he did not provide Watters with any information regarding the investigation. (Id.) The information provided to Entenok by Watters was consistent with what Special Agent Williams had relayed to him. (Tr. 45.) Entenok testified that he did not threaten or make any promises for Watters trial testimony. (Tr. 46.) Entenok testified that prior this his conversation with Special Agent Williams, he had no knowledge of Watters. (Tr. 47.)

Having reviewed the record, file, and the arguments made by both the Defendant-Petitioner and the State of Ohio, this Court reaches the following **Conclusions of Law**.

III. CONCLUSIONS OF LAW

Criminal Rule 33(A)(6) states that a new trial may be granted upon the motion of the defendant “[w]hen new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial.” Additionally, the defendant’s substantial rights must have been materially affected. Crim.R. 33(A). In order to

establish that the new evidence warrants a new trial pursuant to Crim.R. 33(A)(6), the defendant must demonstrate that the new evidence: (1) discloses a strong probability that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) is such as could not in the exercise of due diligence have been discovered before the trial, (4) is material to the issues, (5) is not merely cumulative to former evidence, and (6) does not merely impeach or contradict the former evidence. *State v. Petro*, 148 Ohio St. 505 (1947); *see also State v. Parker*, 2012-Ohio-362 (8th Dist.).

New trials are not to be granted lightly because of “the concern that a judge's nullification of the jury's verdict may encroach on the jury's important fact-finding function.” *State v. Luckett*, 144 Ohio App.3d 648, 655 (8th Dist. 2001), quoting *Tri Cty. Industries, Inc. v. Dist. of Columbia*, 200 F.3d 836, 840 (D.C.Cir. 2000), quoting *Langevine v. Dist. of Columbia*, 106 F.3d 1018, 1023 (D.C.Cir. 1997); *see also State v. Collier*, 2016-Ohio-4951, ¶ 61 (8th Dist.); *State v. Townsend*, 2008-Ohio-6518, ¶ 61 (8th Dist.).

When ruling on a motion for new trial, the trial judge has a right to evaluate the credibility of the claimed newly discovered evidence. *State v. Cardin*, 25 Ohio Law Abs. 289 (2nd Dist. 1937), *State v. Krause*, 2017-Ohio-7952, ¶ 73 (11th Dist.). If the newly discovered evidence is not credible, it is grounds to deny the motion for new trial. *State v. Washington*, 2016-Ohio-5329, ¶ 19 (8th Dist.).

[W]hen a defendant seeks a new trial based upon a witness's recanted testimony, the trial court must evaluate the credibility of the recanting witness. *Toledo v. Easterling*, 26 Ohio App. 3d 59, 60, 26 Ohio B. 233, 498 N.E.2d 198 (6th Dist.1985). The court must determine whether the recanting witness told the truth at trial or if the witness's recantation is true. *Id.* If the trial court determines the recantation is believable, the trial court must then determine whether the recanted testimony would have materially affected the outcome of trial. *State v. Brown*, 186 Ohio App.3d 309, 2010-Ohio-405, 927 N.E.2d 113, ¶ 47 (7th Dist.).

Id. at ¶ 20; *see also State v. Bolan*, 2011-Ohio-4501, ¶ 55 (8th Dist.), quoting *State v. Braun*, 8th Dist. Cuyahoga 2011-Ohio-1688, ¶ 39 (8th Dist.). ("[B]efore a trial court may grant a motion for a new trial on the grounds that a witness has recanted his testimony, a trial court must determine whether the statements of the recanting witness are credible and true.").

In the context of a motion for new trial, courts view newly discovered evidence where a witness purportedly recants previous testimony with the utmost scrutiny. *Taylor v. Ross*, 150 Ohio St. 448 (1948), paragraph three of the syllabus ("[r]ecanting testimony ordinarily is unreliable and should be subjected to the closest scrutiny."). When the basis of Defendant's Motion for a New Trial is a witness recanted testimony, this recantation "mandates that the trial court engage in a two-step analysis. First, "the trial court must evaluate the credibility of the recanting witness." *Washington* at ¶ 20, citing *Toledo v. Easterling*, 26 Ohio App. 3d 59, 60 (6th Dist. 1985). In other words, "the court must determine whether the recanting witness told the truth at trial or if the witness's recantation is true." *Washington* at ¶ 20.

"Some relevant considerations in weighing the competing versions of testimony are: whether the judge reviewing the new trial motion also presided over the trial; whether the witness is a relative of the defendant or otherwise interested in his success; and whether the new testimony contradicts evidence proffered by the defense at trial." *State v. Wright*, 2011-Ohio-5761, ¶19 (7th Dist.) (citation omitted).

Second, "[i]f the trial court determines the recantation is believable, the trial court must then determine whether the recanted testimony would have materially affected the outcome of trial." *State v. Brown*, 2010-Ohio-405, ¶ 46 (7th Dist.); *State v. Gilbert*, 2018-Ohio-3789, ¶ 29 (8th Dist.), citing *State v. Brown*, 2018-Ohio-4904, ¶ 47 (7th Dist.).

This Court finds that Earwin Watters' recanting affidavits and hearing testimony are not credible. First, Watters testified that he had a close relationship with Defendant, calling him family and a friend from the streets. (Tr. 17.) Second, portions of his testimony and his affidavits are not consistent with each other. The affidavits state that he testified to what he was instructed to say. "I went along with what the prosecutor told me to say, which was that I witnessed Juwan Martin, chasing a car firing shots, which was not true, I have never seen him do nothing and only testified to what they told me to say and was afraid." However, at the motion hearing, Watters testified that he made up those exact details in his testimony and no one told him what to say. (Tr. 30-35.) Those "made up" details are consistent with the testimony of the other eyewitness. Both sworn statements, the affidavits and the testimony, could not have happened. This Court does not believe that Watters made up details that matched Debby Crayton's testimony. It is more credible that Watters' testimony at the trial of this matter was truthful, and his testimony at the hearing was not truthful. Debby Crayton testified that she heard gunshots coming from Hecker Street, looked out the window and saw Martin running down the street with a gun in his hand. (Tr. 735; 741-44.) Crayton's description of Martin's movements running down the street was corroborated by Watters' trial testimony version of events.

Consequently, this Court finds that Watters' recanting testimony at the hearing held May 22, 2024, and his affidavits attached to Defendant's Motion for New Trial are not credible.

The Court finds that Detective Entenok's affidavit and hearing testimony were credible. Watters' story requires multiple law enforcement agencies, including the Cleveland Police, the Cuyahoga County Prosecutor's Office, and the FBI, conspire together to convict Defendant. The FBI, especially, had no reason or incentive to go along with such a plan. Watters' affidavit and his hearing testimony stated that Cleveland detectives approached him first. While the FBI reports,

Detective Entenok's trial testimony, affidavit, and hearing testimony indicate that the FBI spoke with Watters first and based on that conversation contacted Cleveland Police, not the other way around. Defendant's own motion stated "It is without dispute that neither the Cleveland Police nor the Cuyahoga County Prosecutor's Office could, in actuality, offer any promises, as they do not control federal prosecutions. There is, in fact, no accusation here that the Cuyahoga County Prosecutor's Office knowingly or intentionally induced Mr. Watters to lie." (Defense Motion at P. 11)

Since this Court has found the recanting affidavits and hearing testimony not credible, it is further the finding of this Court that the recanting affidavits and hearing testimony would not have materially affected the outcome of the trial.

WHEREFORE, the Court finds that based on the consistency of the trial testimony and the inconsistencies in Watters' affidavits and testimony at the motion hearing, Watters' recantation is not credible. Consequently, Defendant Jojwan Martin's Motion for New Trial is hereby **DENIED**.

IT IS SO ORDERED.

DATE: 1/31/2025



JUDGE CASSANDRA COLLIER-WILLIAMS