

Order

Michigan Supreme Court
Lansing, Michigan

May 18, 2016

Robert P. Young, Jr.,
Chief Justice

150994

Stephen J. Markman

Brian K. Zahra

Bridget M. McCormack

David F. Viviano

Richard H. Bernstein

Joan L. Larsen,

Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 150994

COA: 314564

Calhoun CC: 2001-004547-FC

LORINDA IRENE SWAIN,
Defendant-Appellant.

On order of the Court, leave to appeal having been granted and the briefs and oral arguments of the parties having been considered by the Court, we REVERSE the February 5, 2015 judgment of the Court of Appeals and we REMAND this case to the Calhoun Circuit Court for proceedings consistent with its judgment ordering a new trial. The Court of Appeals erred in applying *People v Cress*, 468 Mich 678 (2003), to an analysis of a successive motion filed pursuant to MCR 6.502(G)(2). *Cress* does not apply to the procedural threshold of MCR 6.502(G)(2), as the plain text of the court rule does not require that a defendant satisfy all elements of the test. The Court of Appeals erred in failing to give proper deference to the specific findings of the trial court that the defendant was entitled to a new trial. The defendant provided “a claim of new evidence that was not discovered before the first” motion for relief from judgment, MCR 6.502(G)(2), and we conclude that the trial court did not abuse its discretion in ordering a new trial on the facts of this case. In light of this disposition, we decline to address the other issues presented in our order granting leave to appeal.

We do not retain jurisdiction.

MCCORMACK, J., not participating because of her prior involvement in this case as counsel for a party.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 18, 2016

Clerk