

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

vs

No. 79-911862

Honorable M. CHYLINSKI

HENRY L. HENCE, JR.

Defendant,

MOTION FOR RELIEF FROM JUDGMENT

Defendant HENRY HENCE, JR., through his attorney, David Cripps, states as follows in support of this Motion:

1. Defendant, and codefendant, Raymond Gallagher, were convicted of first-degree murder, and conspiracy to commit same, in November, of 1979. Their joint jury trial was held in the Wayne County Circuit Court, the Honorable Victor Baum, presiding.

2 Both defendants received two, natural life sentences. One, for murder, and one for conspiracy. Defendant Hence was represented at trial by attorney Edmond Tropp.

3. The state's charge/theory, was that Gallagher had paid Hence, via a middleman, to kill the deceased because he had testified against Gallagher at a stolen car trial. (Ex. 1, p.3, & Ex. 2.)

4. **Codefendant's Reversal:** But, post-conviction (on separate appeal) the trial court held that the trial was "prejudiced" and reversed Gallagher's convictions because alternate suspect evidence was withheld by both the prosecutor, and Gallagher's attorney. People v. Hence & Gallagher, pp. 33(b)-34, No. 79-911862-FM (Wayne Cir. 10/30/80), (Ex. 1.):

Here, we have both the prosecutor and defense counsel keeping an important fact from the jury. Here, we have the adversary system at its worst. Id., 23 n.5. (Emphasis supplied.)

part' aff'm, People v. Gallagher, 116 Mich 283, 295 (1982) (trial "prejudiced").

5. And, conceal it they had:

- During trial, the prosecutor (and cocounsel) steered questions, concerning Swartz (the alternate suspect) away from the lead Detective, and other witnesses, Hence & Gallagher, 7;
- The state "lost" a police memo, which Detectives wrote after Swartz's interview, id. 36;
- Witnesses stated, that the prosecutor admitted he knew who the alternate suspect was, but, would not bring up the matter since he thought it would help the defense, id., at 23 & 23 n. 5;
- Cocounsel removed all mention of Swartz from office files, so support counsel would not see it, Id.: