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Press Release
March 28, 2018
Nine Pages

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For Immediate Release

Prosecutor Kym Worthy Dismisses Homicide Charges Against Richard Phillips

Statement of Prosecutor Worthy

Richard Phillips's case is the first case reviewed by our Conviction Integrity Unit formed in January of this year. It is headed by the highly capable and skilled former State Appellate Defender, Valerie Newman.

The important work of this unit exemplifies the commitment that the WCPO has to correct any wrongful convictions. Our mission is always to make sure that justice is served. We have a duty to the public, crime victims' families and to the accused, to make sure that we have prosecuted and convicted the correct person. When cases are challenged on the basis of new evidence that meets the criteria of our CIU, we have a duty to aggressively investigate the purported new evidence. This may include interviewing surviving witnesses, locating and reviewing all of the physical evidence, and requesting new forensic testing.

It would be irresponsible and ethically inappropriate not to investigate these cases. We are not going to seek dismissal of a case in court without closely examining it. As prosecutors, we are the ultimate arbiters of what relief is appropriate.

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We always want to make sure that we have done everything to make sure that we have a case we can prove beyond a reasonable doubt. In the cases where there is a challenge to a conviction, we take it equally as seriously.

I would like to thank Assistant Prosecutor Valerie Newman and the team that I have assigned to her. I also want to thank David Moran and the law students of the University of Michigan Innocence Clinic and Attorney Gabi Silver of the Cripps and Silver law firm for their work on behalf of Mr. Phillips.

The Richard Phillips case has been thoroughly reviewed, investigated, and considered. It has been determined that the case against Mr. Phillips was based primarily on the false testimony of the main witness in the case. I am pleased to announce today that this over 40 year old homicide conviction against Richard Phillips will finally be dismissed. The system failed him. Nothing that I can say will bring back years of his life spent in prison. Justice is truly being served today. We will recommend to the Michigan Attorney General's Office that that Mr. Phillips receive wrongful conviction compensation. We sincerely wish him well.

Statement of Assistant Prosecuting Attorney Valerie Newman, CIU Director

I am honored to have been chosen to lead this Unit. Every case we review, regardless of outcome, strengthens and reaffirms this office's commitment to justice.

Statement of David Moran, Michigan Innocence Clinic

Today marks the end of a long journey for Richard Phillips. For 45 years, Mr. Phillips had fought tirelessly to prove his innocence in the 1971 murder of Gregory Harris. The attorneys and student-attorneys of the Michigan Innocence Clinic are grateful to the new Conviction Integrity Unit of the Wayne County Prosecutor's Office and to Kym Worthy for recognizing today that Mr. Phillips was wrongly convicted of that murder.

Ms. Worthy's statement accurately sets forth the events leading up to the murder of Gregory Harris and Mr. Phillips' conviction. From the moment he was charged with Harris' murder, Mr. Phillips has maintained his innocence. Only Fred Mitchell's word tied Mr. Phillips to the crime.

In 2010, Mr. Phillips' co-defendant, Richard Palombo, admitted for the first time that he and Fred Mitchell murdered Gregory Harris and that Mr. Phillips was never involved in the murder. Even after Palombo was told that disputing Mr. Phillip's guilt would destroy his own chances at being granted clemency, he insisted that Richard Phillips was innocent.

Four years passed before we learned of the exonerating testimony Palombo gave in 2010. Once this testimony was discovered, we interviewed Palombo and found his account of the

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Harris murder to be consistent and credible. We then agreed to represent Mr. Phillips and filed a motion for relief from judgment for him. On August 8, 2017, Judge Kevin Cox granted that motion. On December 12, 2017, Judge Cox granted bond to Mr. Phillips and he was released from incarceration—free for the first time in 45 years.

Not long after, the Conviction Integrity Unit of the Wayne County District Attorney's Office agreed to open an investigation into Mr. Phillips' case. The CIU's investigation resulted in the discovery of additional evidence that Fred Mitchell's trial testimony was false and that it was Mitchell and Palombo who killed Gregory Harris.

Today, Richard Phillips can finally turn the page on this long and unfortunate chapter of his life. We again thank the Wayne County Prosecutor's Office and Ms. Worthy for its willingness to reinvestigate this case after all of these years. We also thank the law students who worked tirelessly on this case over the last few years: Kate Canny, Jarred Klorfein, Caroline Bell, Andrea Scanlan, Brittany Chiang, Michael Chryssos, Valerie Stacey, James Mestichelli, Elizabeth Cole, Aimee Ford, and Wesley Papiernik. The collective labor of these student attorneys was critical to Mr. Phillips' freedom.

But most of all, this day is thanks to the extraordinary perseverance of Richard Phillips. Mr. Phillips never stopped advocating for his own innocence, and continued to fight to prove it no matter how many setbacks he experienced in court.

Since his release from custody, Mr. Phillips has begun the long process of re-integrating into a society that looks very different from the one he left. Mr. Phillips has settled in Canton, where he's been reconnecting with old friends and trying to make ties in the community. Mr. Phillips has begun regularly attending Renaissance Unity Church, where he shares his story so the congregants can learn from his struggle. My students have even told me that Mr. Phillips is becoming adept in the proper use of text emojis. Mr. Phillip's work to rebuild his connections to the community will continue. But after today, Richard Phillips can begin that new journey in earnest, knowing that his freedom truly belongs to him again.

Statement of Gabi Silver, Cripps and Silver

In August of 2017, thanks to the incredible work of Dave Moran of the Michigan Innocence Clinic and his dedicated students, Richard Phillips was granted a new trial by Judge Kevin Cox. I was lucky enough to be asked by Dave Moran to take on the representation of Richard Phillips as trial counsel. After meeting Richard and speaking to him for just five minutes, I accepted. Richard was grateful for all of the hard work everyone put in, but did not really expect that he would really ever win his release from the wrongful incarceration he had suffered for 45 years.

In December of 2017, while awaiting trial, Richard was granted a bond and released into a very different world than the one he had been ripped from in 1971. He took it slowly and

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remained humble and thankful for all he had received. He has lived a quiet life in these past few months, attending church, grocery shopping, painting and making new friendships.

It saddens me to think about the potential this man, who is now 71, could have had but for the decades of wrongful incarceration. He is an incredibly intelligent, warm, engaging and caring man who has much to offer. I am lucky to call him my friend.

I am very thankful to Kym Worthy who established the Conviction Integrity Unit in the Wayne County Prosecutor's office. When this matter was referred to them for investigation by myself and Dave Moran, Assistant Prosecutor Valerie Newman and Investigator Patricia Little quickly went to work to determine the truth in this case and quickly realized what myself and Dave Moran and all of the countless students working on this case already knew. Richard Phillips is truly innocent.

While our system of justice is truly a great one, sometimes wrongful convictions occur. I am thankful that we were all able to work together to set this one right.

Facts of the Case

Richard Phillips and his co-defendant Richard Palombo were charged with First Degree Murder and Conspiracy to Commit First Degree Murder in connection with the homicide of Gregory Harris. During the jury trial in the case, the principal witness for the People was Fred Mitchell. Mitchell said that he knew both the defendants and the victim, and had helped them set up Harris's murder. Neither defendant testified at trial. Phillips called no witnesses.

Investigation in the Phillips case revealed that Mitchell's trial testimony was likely false and must be discredited. At trial Mitchell testified that he was paroled from a manslaughter conviction in April 1971. In June 1971, he met Palombo and Phillips at a bar and discussed killing Gregory Harris. At the meeting, Phillips asked Mitchell if he would help set-up Harris so Palombo and Phillips could kill him. Mitchell said he would think about it. Four days later, the men met at Mitchell's home. During this meeting, the three men again discussed killing Gregory Harris. Palombo told Mitchell that the murder would take place on or around June 26, 1971. He also told Mitchell that he had .22 caliber revolvers that they would use to kill Harris. It was decided that Mitchell would convince Harris to meet the men by asking him to help them break into a nearby home.

Three days after the meeting at Mitchell's home, Phillips and Palombo returned to Mitchell's home with another man named Pooch. Again, the men discussed the plan to kill Harris. At some point, Mitchell called Harris and asked him to meet the men at a local drug store on June 26, so they could rob a store. On June 26, 1971, Harris picked up Mitchell and the defendants in his vehicle at the Davison Drug Store. The men drove to a second location

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and picked up Pooch. They dropped Mitchell off at a local bar, under the guise that he would be the look-out for the breaking and entering. Phillips, Palombo, Harris and Pooch drove away while Mitchell waited at the bar. A few hours later, Phillips and Palombo came to the bar and Palombo told Mitchell that "the bill had been collected", which Mitchell understood to mean that Harris had been killed. The men then went to Mitchell's home and described what occurred. Phillips and Palombo told Mitchell that they, Phillips, Palombo and Pooch, killed Harris in his car in an alley. Harris was shot while sitting in the backseat. Palombo said that they had dumped Harris's body in Troy. A few days later, Palombo gave Mitchell a .22 caliber revolver, which was subsequently confiscated in July 1971, when Mitchell was arrested for a separate crime.

Harris's wife looked for him after he had failed to come home from the drug store on June 26, 1971. She found his vehicle on the evening of June 28, 1971 and noticed red stains on the passenger side of the back seat. She reported her husband as missing the following morning. On March 3, 1972, workers for the City of Troy found a decomposed body on the side of the road. Harris's wife identified the clothing on the body as the clothing Harris was wearing on June 26, 1971. It was determined that Harris had been shot and that the bullets came from a .22 revolver. He had been dead at least six months.

The Michigan State Police tested a gun and the fired evidence from Harris's body. Due to the condition of the bullets, the police were unable to make a positive identification.

Mitchell was arrested for an unrelated crime on March 15, 1972. The following day, he asked to speak with detectives and told them about the murder of Gregory Harris hoping to secure a deal regarding an outstanding warrant. As a result of the information Mitchell provided, defendants Palombo and Phillips were charged with First Degree Murder and Conspiracy to Commit Murder.

A jury convicted both men of Conspiracy to Commit Murder and First Degree Murder in October 1972. In November 1972, both defendants were sentenced to life in prison without parole. Mitchell, who testified at the trial, was never charged for Harris's killing.

Procedural History of the Case

Defendant Phillips's convictions were affirmed on appeal in 1974 by the Michigan Court of Appeal (COA) and the Michigan Supreme Court (MSC) denied leave in 1975. He then filed an application for leave to appeal in 1979 which the COA denied, as did the MSC in 1980.

In 1992, he filed a writ for superintending control, which the COA treated as an application for leave to appeal and issued an order remanding the case to the trial court for an evidentiary hearing before a successor judge. That judge granted a new trial, based on a

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finding of prosecutorial misconduct—allegedly the prosecution had failed to disclose a deal for the critical witness testimony of Fred Mitchell. The COA reversed because there was no evidence that a deal actually existed with Mitchell, and the Supreme Court denied defendant's delayed application for leave to appeal.

Thereafter, in 1997, Phillips filed a motion for relief from judgment, raising nine issues. The People responded in November 1997. After the passage of many years, the successor trial judge ruled on October 24, 2008 that Phillips deserved a new trial. The ruling was based upon the fact that trial counsel failed to request a cautionary instruction regarding Fred Mitchell's accomplice testimony, thereby violating Phillip's Sixth Amendment right to counsel. The People submitted affidavits, and the trial court subsequently found that the People did not receive notice of this order until November 2009. In light of this fact, a new successor judge re-issued the order, newly dated June 11, 2010. The prosecution appealed and COA reversed the trial court on August 30, 2010. The Court of Appeals addressed solely on the ineffective assistance of counsel issue.

In 2017, Judge Kevin Cox allowed the defendant to amend his still-pending 1997 Motion for Relief From Judgment regarding the issues that had not been ruled on and allowed him to add new evidence, Palombo's August 24, 2010 Commutation Hearing transcript. Palombo's sworn testimony was admitted into evidence by the court, subject to the People's hearsay objection. Palombo testified that Mitchell's testimony was a lie.

For the first time, Palombo admitted his role in the murder of Gregory Harris and said that it was Fred Mitchell who shot and killed Harris. He said Mitchell had a motive because Mitchell thought that Gregory Harris and his brother stole money from his mother while Mitchell was in prison. Palombo testified that he and Mitchell were the only two people in the car when Gregory Harris was shot and killed. He said a person named Pooch had no involvement in the planning or the murder of Gregory Harris. He further admitted that he gave the gun to Mitchell, and that he and Mitchell disposed of the body in a suburban field near Square Lake Road and Dequindre.

Palombo testified that Richard Phillips did not murder Harris and had nothing to do with it. Palombo said he had been paroled from prison on June 25, 1971, the day before the murder of Gregory Harris, and that he first met Richard Phillips on July 4, 1971 at a barbeque at Mitchell's house, eight days after the murder. Records from the Michigan Department of Corrections confirmed that Palombo was truthful about his release date as he had been released from prison on June 25, 1971.

At the evidentiary hearing before Judge Cox, Phillips testified that he played no role in the death of Gregory Harris. He knew Fred Mitchell at the time as they had known each other for 12 years and would get together to use drugs. He had no knowledge that Palombo or Mitchell had played any role in the murder. He met Palombo on July 4, 1971 at a gathering at Mitchell's home.

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Judge Cox found that Palombo's sworn testimony at his commutation hearing and the testimony of Richard Phillips made a different result probable at a retrial stating that, "Palombo's testimony purports to provide an eyewitness account of the murder that contradicts the testimony of Fred Mitchell. And as defendant notes, Palombo's testimony is consistent with the physical evidence in this case."

On August 25, 2017, the court denied the People's motion for stay and scheduled a trial date of February 5, 2018. On August 28, 2017, WCPO filed an application for leave to appeal. Phillips, at age 71, was released on bond on December 12, 2017. On January 11, 2018, leave was granted by the COA. WCPO and the defense jointly moved to hold the appeal in abeyance, which the Court granted on January 24, 2018. The case was referred to the WCPO Conviction Integrity Unit for Review.

Conviction Integrity Unit Investigation

The Conviction Integrity Unit (CIU) was formed in January 2018 by Prosecutor Kym Worthy to investigate claims of innocence, to determine whether there is clear and convincing new evidence that the convicted defendant was not the person who committed the offense. For a case to be taken by the CIU there are two requirements: 1) the claimants must assert actual innocence, meaning that the defendant maintains that he or she was wrongfully convicted because he or she played no role in the criminal act(s) in question, and, 2) for the CIU to recommend that the conviction be overturned, the investigation must lead to the discovery of new evidence that was not considered by the trier of fact (i.e., judge or jury) during the proceedings that led to conviction.

<https://www.waynecounty.com/elected/prosecutor/conviction-integrity-unit.aspx>

On January 16, 2018, the defense team of David Moran of the Michigan Innocence Clinic, and Gabi Silver of Cripps and Silver requested that the CIU review the Phillips case. Assistant Prosecutor Valerie Newman, CIU Director, determined that the case was appropriate for review and assigned Detective Patricia Little to investigate the case.

The transcripts and other records were reviewed by APA Newman, and it was determined that Mitchell's testimony in the People's case resulted in Phillips's conviction. The next step was the review of the newly discovered evidence from Palombo's 2010 commutation hearing during which he testified that Phillips had nothing to do with the homicide. He further testified that on June 25, 1971, he had been released from prison on parole for a manslaughter case, and he did not know Phillips on June 26, 1971, when Gregory Harris was killed. His parole date was verified by the Michigan Department of Corrections. Palombo said that he met Phillips eight days later at a July 4, 1971 barbeque at Mitchell's house. He said that Fred Mitchell gave false testimony about Phillips's involvement in the Harris homicide. Palombo stated that he had provided the weapon and assisted in disposing

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of the deceased. Palombo testified for the first time at his commutation hearing, knowing that his admission would implicate him as an accomplice to the murder of Gregory Harris.

The Detroit Police Department Harris homicide file was also reviewed. Contained in the file were two reports to the police stating that Fred Mitchell and Richard Palombo were involved in the homicide of Harris and that Fred Mitchell's sister had information about the crime. Nothing in the file indicated that those leads were investigated.

Detective Little confirmed that Fred Mitchell died on August 9, 1997. She located Gregory Harris's brother, Alex Harris, and spoke with him on February 6, 2018. Mr. Harris confirmed that in June 1971, there was a hit on him and that he was living in another state at the time. He confirmed information that Palombo provided about him. He was surprised that his brother Gregory would be in the company of Mitchell and Palombo because "he didn't lead that kind of life." He also said that Fred Mitchell's sister Brenda told him and about Mitchell and Palombo's involvement in killing his brother. Brenda is also deceased.

The investigation led CIU to review an armed robbery case from Oakland County. Phillips was in prison, having been convicted in the robbery case, when he was charged in the Harris homicide. Fred Mitchell told the police that Richard Phillips committed the robbery. However, the description of the robber did not match Richard Phillips. On February 23, 2018, in a video meeting and interview with Palombo's attorney Susan Meinberg, Valerie Newman and Patricia Little, Palombo said that he and Mitchell committed the armed robbery of which Phillips was convicted. Palombo said he testified under oath at Phillips' trial that he and another man committed the robbery, but was unwilling to say it was Fred Mitchell. Oakland County has been informed of this new information.

Dismissal of Charges

The CIU investigation has established that the Wayne County Prosecutor's Office cannot prove beyond a reasonable doubt that Richard Phillips murdered Greg Harris, or that he committed any crime in connection with his murder. The newly discovered evidence from Palombo shows that Mitchell, the central witness, lied during Phillips's trial. Palombo gave evidence under oath stating that Fred Mitchell was the murderer who framed Phillips. At his commutation hearing, Palombo testified that he was the only co-defendant to Mitchell, realizing that the new information could jeopardize any chance that his sentence would be reduced. Fred Mitchell and Richard Palombo were the only two people in the vehicle when Harris was shot and killed and the only two people involved in disposing of the body.

Palombo gave the .22 caliber gun to Mitchell. Mitchell lied under oath with respect to the planning of the murder, as Palombo was in prison and could not have met with Mitchell and Phillips in the two weeks prior to the murder. Phillips never met Palombo until eight days after the murder. Mitchell had the motive to murder Gregory Harris, as he believed that

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Greg and his brother had stolen money from his mother. Harris's brother confirmed to the Detective Little that, at the time, there was a hit out on him and he was living out of state.

Based upon the evidence, this case exceeds the CIU threshold standard of clear and convincing evidence. Phillips was not involved in the murder of Harris. The appeal will be dismissed on the week of April 2, 2018. Today Richard Phillips's trial court charges of First Degree Murder and Conspiracy to Commit First Degree Murder were dismissed today before Judge Kevin Cox.

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