

# Court of Appeals, State of Michigan

## ORDER

People of MI v Jeremy Laronn Burrell

Docket No. 343465

LC No. 2007-402268-FC

Douglas B. Shapiro  
Presiding Judge

David H. Sawyer

William B. Murphy  
Judges

The Court orders that the motion to waive fees is GRANTED for this case only.

The Court further orders that the motion to remand and the delayed application for leave to appeal are DISMISSED. Defendant has failed to demonstrate the entitlement to an application of any of the exceptions to the general rule that a movant may not appeal the denial of a successive motion for relief from judgment. MCR 6.502(G).

Shapiro, P.J., would grant the motion to remand for an evidentiary hearing. Defendant's prior motion filed under MCR 6.500 *et seq.*, was based upon hearsay affidavits of two individuals stating that the victim of the shooting had recanted his testimony. The panel, myself included, denied his application for leave to appeal. The instant motion, by contrast, is accompanied by a lengthy, detailed affidavit signed by the victim stating that defendant was not the man who shot him and which, on its face, meets the requirements of *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003), namely: "(1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial." Given the detailed and exculpatory nature of the victim's affidavit and the fact that his testimony at trial was the primary and most compelling evidence of guilt against defendant, I would remand for an evidentiary hearing so that the trial court can properly make the necessary credibility determinations and, having done so, rule on the motion. See *People v Johnson*, \_\_\_ Mich \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2018) (Docket No. 154128); slip op at 20-21.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

OCT 25 2018

Date

Chief Clerk