

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 25, 2012

v

PAUL DENNIS HOLDEN,
Defendant-Appellant.

No. 304364
Kalamazoo Circuit Court
LC No. 2011-000087-FH

Before: MARKEY, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

SHAPIRO, J. (*dissenting*).

I respectfully dissent. After a full review of the existing record, I conclude that there are substantial questions as to the effectiveness of defendant's trial counsel that cannot be resolved without an evidentiary hearing. These questions include whether the acts alleged by complainant were physically possible, whether complainant was subject to effective cross-examination, and whether defense counsel failed to request relevant medical and psychological records. Given the unusual facts of this case, these issues go to the heart of the question of defendant's claim of actual innocence.

The interests of both justice and efficiency require that these issues be addressed in this appeal of right, rather than in subsequent post-conviction motions or applications for leave. Accordingly, I would remand the case to the trial court for a *Ginther*¹ hearing and would retain jurisdiction so that we may properly resolve this appeal on the basis of a full record.

/s/ Douglas B. Shapiro

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).