

Court of Appeals, State of Michigan

ORDER

People of MI v Christopher Lovelace

Docket No. 299010

LC No. 03-007811-FC

William C. Whitbeck
Presiding Judge

Peter D. O'Connell

Amy Ronayne Krause
Judges

The Court orders that the delayed application for leave to appeal is DENIED for failure to meet the burden of establishing entitlement to relief under MCR 6.508(D).

Krause, J., I respectfully dissent.

I recognize that there is substantial evidence of defendant's guilt and that defendant pleaded no contest. However, defendant has submitted objectively verifiable evidence of a log from the electronic tether he was wearing at the time of the murder, allegedly proving that he was at home a mere three minutes from the time of the shooting. This Court has not been provided with a more authenticated version than a photocopy, nor has this Court been provided with a key to deciphering what the computer messages in the log mean. While the lower court references this log in its opinion, there is no discussion of the key to this log. However, if the log actually does show that defendant was at home so close in time to the shooting, then I believe that would show a significant probability that defendant is actually innocent.

To be clear, I do not hold that he is innocent on the basis of the record presently available to this Court, but I would hold that the trial court erred in failing to conduct an evidentiary hearing. Furthermore, the trial court erred in stating that this Court previously "affirmed" defendant's conviction and sentence, when in fact this Court merely denied leave to appeal. Additionally, the lower court made no record regarding its ruling on defendant's request to withdraw his plea at sentencing.

The courts are right to be extremely hesitant to overturn convictions, especially where a defendant has entered a plea. However, the record below is insufficient, which necessitates an evidentiary hearing.

This matter should be remanded to the trial court for an evidentiary hearing.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAY 2 2011

Date

Larry S. Royster
Chief Clerk