

S T A T E O F M I C H I G A N
I N T H E C I R C U I T C O U R T F O R T H E C O U N T Y O F K E N T

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

vs

STEPHEN DENNIS TURNER,

Defendant.

Case No. 93-63014-FC

Hon. Dennis C. Kolenda

MOTION FOR IN CAMERA PROCEEDING
TO DETERMINE STATUTORY PRIVILEGES
AND TO SUPPRESS PRIVILEGED STATEMENTS AND
TO PREVENT THE PROSECUTOR FROM CALLING THE
DEFENDANT'S WIFE TO TESTIFY

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Grand Rapids, Michigan 49503
(616) 456-7831

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S T A T E O F M I C H I G A N
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

vs

STEPHEN DENNIS TURNER,

Defendant.

Case No. 93-63014-FC

Hon. Dennis C. Kolenda

**MOTION FOR IN CAMERA HEARING
TO DETERMINE STATUTORY
PRIVILEGES, TO SUPPRESS
PRIVILEGED STATEMENTS AND
TO PREVENT THE PROSECUTION
FROM CALLING THE DEFENDANT'S
WIFE TO TESTIFY**

NOW COMES THE DEFENDANT, STEPHEN DENNIS TURNER, by and through his attorneys, KRAUSE & ZAMBON, P.C., by Tonya L. Krause, and respectfully requests this Honorable Court to grant his Motion for an in camera hearing to determine whether the Defendant may assert the spousal/communication privilege if his wife, ALISHA TURNER, is called upon to testify at trial in the above-captioned cause. Additionally, the Defendant requests this Court to suppress any privileged communications between the Defendant and his wife, ALISHA TURNER. Finally, if the Court determines that the spousal privilege applies, the Defendant requests that the prosecution be precluded from calling the wife to testify at trial. In support of this Motion, the Defendant states as follows:

1. The Defendant is currently charged with Criminal Sexual Conduct in the First Degree (as an aider and abettor)(one count) and Criminal Sexual Conduct in the Second Degree (one count).
2. The Defendant believes that the State will attempt to

introduce incriminating statements made by the Defendant to his wife, ALISHA TURNER.

3. At the time the alleged statement(s) were made, the Defendant and ALISHA TURNER were lawfully married.

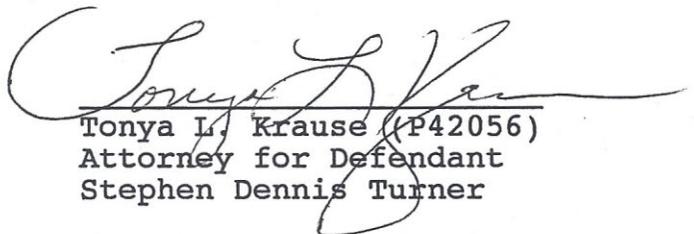
4. The Defendant and ALISHA TURNER remain lawfully married and will be so married on November 29, 1993, the date scheduled for trial.

5. The Defendant objects to, and will not consent to, his wife, ALISHA TURNER, testifying against him at said trial.

WHEREFORE, the Defendant respectfully requests that this Honorable Court grant his motion for an in camera hearing to determine the applicability of the spousal/communication privilege, to suppress any privileged communications, and to enter an Order preventing the prosecution from calling the Defendant's wife to testify at trial.

Dated: November 17, 1993

Respectfully Submitted,



Tonya L. Krause (P42056)
Attorney for Defendant
Stephen Dennis Turner

S T A T E O F M I C H I G A N
I N T H E C I R C U I T C O U R T F O R T H E C O U N T Y O F K E N T

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

vs

STEPHEN DENNIS TURNER,

Defendant.

Case No. 93-63014-FC

Hon. Dennis C. Kolenda

**BRIEF IN SUPPORT OF MOTION
FOR IN CAMERA HEARING TO
DETERMINE STATUTORY
PRIVILEGES, TO SUPPRESS
PRIVILEGED STATEMENTS, AND
TO PREVENT THE PROSECUTOR
FROM CALLING THE DEFENDANT'S
WIFE TO TESTIFY**

FACTS

The Defendant, STEPHEN DENNIS TURNER, is charged with one count of Criminal Sexual Conduct in the First Degree and one count of Criminal Sexual Conduct in the Second Degree.

Currently the Defendant is married to ALISHA TURNER and was so married on July 7, 1993, the date of the alleged offense. During the course of her investigation relative to the above charges, Detective Christine L. Karpowicz of the Grand Rapids Police Department interviewed ALISHA TURNER. According to Detective Karpowicz, ALISHA TURNER, related that the Defendant made incriminating statements to her.

The Defendant believes that the State will attempt to introduce the alleged incriminating statements through ALISHA TURNER'S testimony. The Defendant, by way of this Motion and Brief, asserts the marital privilege and refuses to consent to his wife testifying to privileged information at trial.

LAW AND ARGUMENT

The marital privilege is codified in MCLA 600.2162; MSA 27A.2162, which provides in pertinent part:

A husband shall not be examined as a witness for or against his wife without her consent; nor a wife for or against her husband without his consent, . . . nor shall either, during the marriage or afterwards, without the consent of both, be examined as to any communication made by one to the other during the marriage. . . .¹

The statute codified the common-law "spousal privilege" and the "confidential communication privilege." The spousal privilege precludes spousal testimony. The privilege can be asserted only while the spouses are legally married and it precludes all testimony regardless of whether the events at issue occurred before or during the marriage. People v Stubli, 163 Mich App 376; 413 NW2d 804 (1987); People v Love, 425 Mich 691, 696; 391 NW2d 738 (1986).

On the other hand, the communication privilege applies to confidential communications made within the marital relationship irrespective of the marital status of the parties at the time of trial. Stubli, *supra*; People v Wadkins, 101 Mich App 272,282; 300 NW2d 542 (1980); People v Hamacher, 150 Mich App 671m 673l 389 NW2d 477 (1986), lv den 426 Mich 867 (1986). This privilege requires the consent of both parties.

The purpose of the marital privilege is its perceived role in fostering the harmony and sanctity of the marriage relationship. Trammel v U.S., 445 US 40; 100 S Ct 906; 63 L Ed2d 186 (1980) In that regard, an in camera hearing is the most appropriate method

¹Various exceptions to this rule are listed within the statute, none of which apply in this case.

for the Court to examine the alleged statements and to determine whether or not the alleged statements are subject to the statutory privileges. In Porter v Osteopathic Hosp, 170 Mich App 619 (1988), the Court of Appeals held that of necessity, the determination of whether a privilege applies would require that the nature of the information be disclosed in the in camera hearing. Although Porter dealt with the issue of the physician-patient privilege, the same rationale should apply to the spousal privilege.

Once the Court has decided that the marital privilege applies to the communications in question, the Court should suppress the privileged statements. Furthermore, if the Court finds that the marital privilege applies in this case, an Order should enter precluding the prosecutor from calling the Defendant's wife to the stand.

Dated: November 18, 1993

Respectfully Submitted,


Tonya L. Krause (P42056)
Attorney for Defendant
Stephen Dennis Turner

NOTICE OF HEARING

TO: Kevin Bramble
Circuit Court Clerk Kent County Prosecutors Office
3rd Floor Hall of Justice 416 Hall of Justice
Grand Rapids, MI 49503 Grand Rapids, MI 49503

PLEASE TAKE NOTICE that the foregoing Motion will be heard at the Hall of Justice, 333 Monroe Avenue, NW, Grand Rapids, Michigan, before Judge Kolenda on Friday, November 19, 1993, at 8:30 a.m. or as soon thereafter as counsel can be heard.

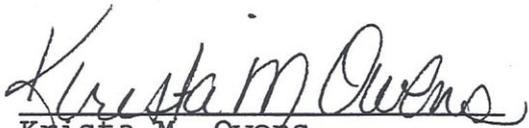
KRAUSE & ZAMBON, P.C.

Dated: November 18, 1993

By: 
Tonya L. Krause (P42056)
Attorney for Defendant
Stephen Turner

PROOF OF SERVICE

The undersigned certifies that a copy of the Motion for in Camera Proceeding to Determine Statutory Privileges and Notice of Motion was served upon Kevin Bramble, Assistant Prosecuting Attorney by personally serving and/or mailing the same to the respective address of record with delivery fee prepaid thereon on November 18, 1993.


Krista M. Owens