

STATE OF MICHIGAN

IN THE 17TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF KENT

THE PEOPLE OF THE
STATE OF MICHIGAN,

vs.

File No.: 93-63014-FHA
93-63014-FHB

DANIEL A. TURNER and
STEPHEN D. TURNER

Defendants.
_____ /

MOTION PROCEEDINGS

BEFORE THE HONORABLE DENNIS C. KOLENDA, CIRCUIT JUDGE

Grand Rapids, Michigan - Friday, August 20, 1993

APPEARANCES:

FOR THE PEOPLE:

JOSH MINKLER
Assistant Prosecuting Attorney
416 Hall of Justice
Grand Rapids, MI 49503

FOR THE DEFENDANTS:

TONYA L. KRAUSE
920 McKay Tower
Grand Rapids, MI 49503

ROBERT MIRQUE JR.
Defender's Office
920 McKay Tower
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STATE APPELLATE
DEFENDER OFFICE

T A B L E O F C O N T E N T S

WITNESSES: (None) .

EXHIBITS: (None) .

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1 Grand Rapids, Michigan

2 Friday, August 20, 1993

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4 THE COURT: Ms. Krause?

5 MS. KRAUSE: Good morning, your Honor.

6 This is the defendants' joint Motion For
7 Discovery. It is my understanding that Mr. Mirque and
8 Mr. Minkler have spoken already this morning and have
9 stipulated that everything requested in the motion is except
10 for the provisions listed in Section H.

11 In that section, he has requested medical
12 reports of the alleged victim including not only physical
13 exams that occurred after the alleged acts, but we has also
14 asked for information regarding any counselling of the alleged
15 victim and what the counselor is saying and the reports
16 related to that. The prosecutor is objecting to that.

17 Our position on why we are entitled to
18 that information is, given the nature of the alleged victim's
19 testimony in the case thus far, there have been
20 inconsistencies. There is a possibility that the prosecutor
21 may try to use evidence to establish that her behavior and
22 testimony is consistent with that of an abused victim to the
23 extent allowed by laws.

24 For those reasons, we believe we are
25 entitled to that information. There was one --

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1 THE COURT: The prosecutor can't do that
2 unless you've first raised the issue. Are you planning to
3 raise it; that the behavior was inconsistent with that of
4 somebody accused --

5 MS. KRAUSE: Your Honor, that is what I am
6 saying. Given the nature of her testimony thus far, and
7 inconsistencies that have occurred, that may very well be a
8 possibility. And then, for those reasons, I believe we are
9 entitled to that information.

10 MR. MINKLER: Judge, we just feel the
11 information is privileged and shouldn't have to be released.
12 We don't think it will lead to the discovery of any relevant
13 information that would be relevant to this case at this time.

14 THE COURT: There is no question, the
15 information is privileged, but the privilege has to give way
16 under certain circumstances, one of which is when the
17 information is potentially material to a defense and, frankly,
18 given the nature of these charges here, it might be. Whether
19 it is, I don't know.

20 H 1 should be turned over. I can't
21 imagine in a CSC prosecution proceeding without a defendant
22 taking part in that information.

23 H 2 should be answered simply, yes, or
24 no. If the answer is no, then, of course, the matter is
25 resolved. If the answer is yes, then it's the rest of the

1 material requested, including any reports from the counsellor,
2 whoever that person is, be turned over to me and not the
3 lawyers. I will review it, and if I think there is something
4 in there significant enough to justify overriding the
5 privilege, I will do it, but only if necessary.

6 MS. KRAUSE: Thank you, your Honor. There
7 are two additional matters.

8 In the report I've requested -- or both of
9 us had requested all police reports. One item that we forgot
10 to put into the motion is that in this case two officers,
11 Officer Messman and Officer Bar filed revised reports. They
12 are labeled revised, written in large letters across the top
13 of the report. And we are requesting at this time, that their
14 original reports and notes relating to the original report be
15 turned over. We requested those at the time of the
16 preliminary examination and to date they have not been
17 tendered.

18 MR. MINKLER: I don't have them in my
19 file. It's, of course, not my case. If these reports do
20 exist, I don't see any reason why they shouldn't be allowed to
21 have them.

22 THE COURT: I don't either, especially
23 since what they're getting is clearly labeled revised. That
24 means there was something else and they better get the
25 something else.

1 MS. KRAUSE: And, finally, your Honor, we
2 request that if at all possible, all of this information and
3 the meaning allowing the inspection of items seized from the
4 alleged crime scene be provided to us by September 7th. The
5 trial in this case is set for October 4th.

6 MR. MINKLER: September 7th?

7 THE COURT: That's a Tuesday. Let's make
8 it September 13th, no later than that. That way they have
9 three solid weeks to respond. And, frankly, with the holiday
10 and whatever else, it's just going to be hard to coordinate
11 everybody to put it together.

12 MS. KRAUSE: Thank you, your Honor.

13 MR. MINKLER: Thank you.

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STATE OF MICHIGAN)

2) SS

COUNTY OF KENT)

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I, Leslie Brown, CSR, do hereby certify this to be a true, accurate, and complete transcript in the aforementioned case on the aforementioned date, comprised of Pages 11 through 6, inclusive.

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Leslie Brown CSR

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Court Reporter

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Hall of Justice

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Fourth Floor, Judge Kolenda

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