

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-FCB

STEPHEN DENNIS TURNER,

Defendant.

_____ /

MOTION FOR NEW TRIAL

BEFORE THE HONORABLE DENNIS C. KOLENDA, CIRCUIT JUDGE

Grand Rapids, Michigan - Wednesday, February 2, 1994

APPEARANCES:

FOR THE PEOPLE:

KEVIN M. BRAMBLE (P38380)
Assistant Prosecuting Attorney
416 Hall of Justice
Grand Rapids, MI 49503

FOR THE DEFENDANT:

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LESLIE BROWN, CSR KENT COUNTY CIRCUIT COURT
(616) 336-3786

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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) .

1 Grand Rapids, Michigan

2 Wednesday, February 2, 1994

3

4

THE COURT: The Court is convened in the
5 case of The People versus Stephen Dennis Turner, File
6 93-63014-FC. Mr. Turner was, everyone knows, convicted in
7 this court back in December of criminal sexual conduct in the
8 second degree and aiding and abetting his brother in the
9 commission of that offense in the first degree.

10

Now pending before the Court is a motion
11 for directed verdict of acquittal, or the alternative, for a
12 new trial.

13

Mr. Turner is here this morning with Ms.
14 Krause, who represented him at trial. Mr. Bramble, the
15 prosecutor at trial, is likewise here.

16

I'm hearing this motion now because
17 sentencing in this matter is scheduled for this afternoon and,
18 of course, the outcome of the motion here, whatever that
19 outcome is, will have a direct bearing on that sentencing.

20

Ms. Krause?

21

MS. KRAUSE: Thank you, your Honor.

22

Actually, the motion is for a new trial,
23 as the verdict was against the great weight of the evidence,
24 and necessarily included in that motion is a motion for
25 directed verdict of acquittal.

LESLIE BROWN, CSR KENT COUNTY CIRCUIT COURT
(616) 336-3786

1 As I have outlined in the brief that I
2 have presented to the Court, first of all, I would like to say
3 that the facts outlined in the brief where from an uncertified
4 record. As the Court knows, we were provided unedited --
5 excuse me, uncertified daily transcripts, and those are what
6 I used for the recitation of facts.

7 But as I have outlined in the brief, your
8 Honor, I believe that the verdict was against the great weight
9 of the evidence.

10 Throughout the course of the trial, it was
11 very clear from Lekeesha Cage, the victim in this case, from
12 her testimony, that the main player in this episode was the
13 co-defendant, Daniel Turner. That is evidenced by the fact
14 that Mr. Stephen Turner was not charged as a principal in this
15 offense, he was charged as an aider and abetter.

16 Listening to the majority of the
17 Lekeesha's testimony, it became obvious that throughout the
18 main course of this conduct, that Stephen Turner was either
19 out of the apartment, out of the room, or refused to
20 participate when directly ordered to do so by his co-defendant
21 and brother, Daniel Turner.

22 It seems that the main link of evidence,
23 from Lekeesha's testimony linking Stephen Turner to
24 aiding and abetting the criminal sexual conduct in the first
25 degree, was this staged photograph.

1 According to Lekeesha, she believed that
2 the photograph was staged so that it would prevent her from
3 notifying authorities. She indicated that Stephen was present
4 and posed in this photograph and that it was made to look like
5 he was bleeding.

6 Numerous items were taken from the
7 apartment, your Honor. Practically anything that wasn't
8 nailed down was removed from that apartment. No polaroid
9 camera was found, and that is important because Lekeesha
10 specifically testified that the picture was taken with a
11 polaroid camera. She was familiar with polaroid cameras, she
12 knows what they look like, she had used them before, her
13 mother had one. And I think it's important to note that she
14 didn't say there wasn't a photograph that came out of the
15 camera. She said she didn't see a picture.

16 There was not a man's shirt found with
17 jelly on the stomach area, indicating -- or excuse me,
18 corresponding with what she said Stephen Turner was wearing.

19 Any physical evidence that could have been
20 found to support that link of Stephen Turner aiding and
21 abetting the CSC first, was not found. Why is that
22 specifically important? Because everything else she testified
23 to, as far as physical evidence, was found. The video games,
24 the computer games, the peanut butter, everything else was
25 there. Everything but the items that would be necessary for

1 the photograph story she told us about.

2 And I think, given all of that, your
3 Honor, the jury's verdict was against the great weight of the
4 evidence for what was presented as far as Mr. Stephen Turner's
5 participation.

6 As to the criminal sexual conduct in the
7 second degree, Mr. Turner was charged substantively with that
8 and, during cross examination, there was some confusion about
9 who did what when. And when Lekeesha was cross examined about
10 being taken from the back room to the living room and saying
11 that that's when she was touched on the breast, because she
12 had originally said that that's how Stephen touched her on the
13 breast, I asked her about that, and she said, no, it wasn't
14 Stephen, it was Dan.

15 So, I think given that testimony from
16 Lekeesha, the conviction on the CSC second is also against the
17 great weight of the evidence. And for those reasons, I ask
18 for a new trial, as it is against the great weight of the
19 evidence or alternatively a directed verdict of acquittal.

20 THE COURT: Mr. Bramble?

21 MR. BRAMBLE: Your Honor, very briefly, I
22 will respond in opposition of the defense's motion.

23 One thing that struck me during the trial
24 was that the testimony of Lekeeha Cage was amazingly
25 consistent when you take a look at her testimony at the

1 preliminary examination, the trial, and then the statements
2 that were admitted under the Court Rule indicating -- I'm not
3 sure of the exact -- 801D2, I believe it is, which says
4 certain statements are not hearsay if they were offered to
5 rebutt any inference of recent fabrication.

6 If you look at those statements made to
7 the police officers, if you look at the statement that was
8 provided to Detective Vasques and it was taped and played for
9 the jury, it was clear that Lekedha Cage consistently
10 differentiated between each of these defendant's involvement
11 in this incident.

12 She always indicated that Daniel Turner
13 was the individual who actually effected the first degree
14 criminal sexual conduct, she always implicated this defendant
15 and indicated he was, in fact, the person who committed the
16 acts of touching, fondling, and that he also assisted Daniel
17 Turner in the activity involving the knife and the jelly and
18 the efforts to, I submit, frighten and scare her, and lie to
19 her with an incentive not to go forward or not to tell anyone.
20 And I think, when you look at the testimony, again, that it is
21 consistent.

22 Secondly, I have reviewed, and I don't
23 have the form before the Court, but I just thought of it as I
24 was standing here when I was in the warrant corner yesterday
25 reading a publication from the Prosecuting Attorney's

1 Association of Michigan, there was a recent case indicating
2 that on a motion for directed verdict, the Court is not to
3 review the credibility of the witnesses in the trial, that
4 that is not a factor toward the consideration on that type of
5 motion. And I will actually get that case and provide it to
6 the Court and to defense counsel.

7 I still think, if you look at the
8 testimony and the proofs as whole, the Court must deny the
9 defense motion.

10 THE COURT: Anything more, Ms. Krause?

11 MS. KRAUSE: Yes. Thank you. I have the
12 case, Mr. Bramble is referring to. It's the
13 People vs. Herbert, Supreme Court Number 93441. And the
14 Supreme Court of Michigan did indicate that you don't take the
15 credibility of witnesses into consideration when determining
16 a motion for directed verdict of acquittal, but it is
17 certainly still an appropriate consideration in a motion for
18 new trial.

19 And it is somewhat of a catch-22 as far as
20 Lekeesha's testimony is concerned, because there were some
21 things that she was consistent on. There were other things
22 that she was not. And I think the Court, sitting through two
23 weeks of trial, has just as good an idea as do the counsel in
24 this case, as to which things she was consistent on and which
25 one's she wasn't.

1 And it is still appropriate, under the
2 case which Mr. Bramble has referred to, to take the
3 credibility and inconsistencies into account on the new trial
4 motion.

5 THE COURT: I think, first of all, it's
6 useful to state succinctly what I understand the law to be.
7 In the Herbert case, to which reference has been made, and in
8 an earlier series of cases in the Court of Appeals and the
9 Supreme Court, one case, but several, so that it's appropriate
10 to refer to them as a series, the Court said, I believe that
11 this is the law.

12 If there is testimony from a complainant
13 that makes out the elements of the offense which is charged,
14 a motion for a directed verdict may not be granted, even if
15 there is significant reason to question the credibility of
16 that complainant's testimony. That testimony is enough to get
17 the case to a jury and, therefore, precludes granting a
18 directed verdict.

19 However, if there is, in the mind of the
20 trial judge, a significant reason to question the accuracy or
21 credibility of that testimony, then the trial judge is
22 authorized to grant the new trial, in effect, to ask a second
23 jury or a second opinion. And if, because of the experience
24 of the trial, the judge is not comfortable with the
25 complainant's testimony, a new trial can be granted.

1 Here dealing, first of all, with the
2 charge of criminal sexual conduct in the first degree, there
3 is no question but that Lekeesha testified to what amounts to
4 that offense by this Mr. Turner's brother and to acts by this
5 defendant which constitute aiding and abetting. Therefore, a
6 motion for directed verdict is clearly inappropriate.

7 The Court also believes that the new trial
8 ought not be granted on that charge. Frankly, when you read
9 the testimony here, it may not read as persuasively as it came
10 across, but when you listen to all of the testimony, the
11 child's as well as the other things which corroborated it;
12 some directly, some inferentially, and when you listen to some
13 of the arguments of counsel which pulled all of these things
14 together, I certainly am not at all uncomfortable with the
15 jury's conclusion that they believed Lekeesha.

16 Had they not believed her, I would
17 certainly accept that verdict as well, but I can't possibly
18 say here that there was anything suspect in their believing
19 her, because everything taken together, if you were here to
20 have heard and seen it all, did make a persuasive case.

21 That conclusion, frankly, necessarily
22 then leads to a comparable conclusion with regard to the
23 charge of criminal sexual conduct in the second degree.

24 I certainly think that if, on cross
25 examination, a witness recants claims made on direct

1 examination, we have to accept the answers on cross
2 examination just like we would normally accept direct
3 examination answers. And in the totality of things,
4 therefore, if there is, in fact, and actual recantation, we
5 don't have any evidence of the claimed offense and, therefore,
6 not even anything to go to a jury.

7 Here, however, and I gave this a great
8 deal of thought when Lekeesha said what she said in response
9 to Ms. Krause's questions, I'm satisfied that there was more
10 to her description of the alleged criminal sexual conduct in
11 the second degree than was taken back, if you will, by her
12 answers to Ms. Krause's questions. Therefore, this is not a
13 situation where cross examination resulted in any withdrawal
14 or recantation of allegations, rather a situation in which
15 cross examination presented some significant evidence that may
16 well have caused a jury to review the matter carefully, more
17 carefully than it otherwise would have and perhaps even have
18 decided the matter differently.

19 However, since everything else in the
20 case, in particular, the allegations regarding the criminal
21 sexual conduct in the first degree, were as in toto, supported
22 as they were and as persuasive as they were, again, I can't
23 say that there is any reason to have significant concern about
24 her testimony in it's entirety with regard to the other
25 offense.

1 Therefore, as I say, while the jury could
2 have decided this case differently, or if they had, we would
3 clearly have accepted it, they made a credibility assessment
4 they did. They had a lot of information with which to do it.
5 Having sat here and watched all that information, I'm
6 satisfied that it was a reasonable decision on their part,
7 certainly not one that I am uncomfortable with to the point
8 that I would exercise the extraordinary authority. But, I
9 recognize I have it to ask a jury for a second opinion.

10 Therefore, the motion is denied. The
11 record is made and we will proceed with sentencing this
12 afternoon as scheduled.

13 MS. KRAUSE: Thank you, your Honor.

14 THE COURT: Hopefully, you will be here
15 for that, Mr. Bramble, so we know to go looking for to get a
16 prosecutor when we're ready to start.

17 MR. BRAMBLE: I will be here this
18 afternoon. Were you going to -- I read the letter you
19 provided to myself and defense counsel. Will we be meeting at
20 one o'clock, between 1:00 and 1:30 to discuss it?

21 THE COURT: We should.

22 MR. BRAMBLE: Okay.

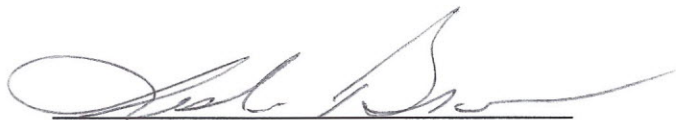
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1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF KENT)
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8 I, Leslie Brown, CSR, do hereby certify
9 this to be a true, accurate, and complete transcript in the
10 aforementioned case on the aforementioned date, comprised of
11 Pages 1 through 12, inclusive.



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