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PEOPLE OF THE  
STATE OF MICHIGAN,

Plaintiff,

vs

STEPHEN DENNIS TURNER,

Defendant.

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Case No. 93-63014-FC

Hon. Dennis C. Kolenda

MOTION FOR DIRECTED VERDICT  
OF ACQUITTAL

MOTION FOR NEW TRIAL

BRIEF IN SUPPORT OF MOTION FOR DIRECTED  
VERDICT OF ACQUITTAL AND MOTION  
FOR NEW TRIAL

NOTICE OF MOTION

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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 Directed Verdict of Acquittal and Motion for New Trial as the verdict is against the great weight of the evidence. In support of this motion the defendant states as follows:

1. The defendant was charged by way of a felony information with Aiding and Abetting, Criminal Sexual Conduct in the First Degree, and with Criminal Sexual Conduct in the Second Degree.

2. At the Circuit Court arraignment, the defendant plead not guilty to the above-charges.

3. The defendant's trial on the above-charges commenced on November 29, 1993.

4. The defendant's trial lasted for approximately two weeks with the jury rendering its verdict on December 13, 1993.

5. The jury convicted the defendant of both charges.

6. Numerous witnesses testified as State's witnesses, including the ten year old alleged victim, Lakeysha Cage.

7. However, the majority of the State's evidence positively established that the defendant was either absent or non-participatory during the co-defendant, Daniel Turner's, actions.

8. There were several inconsistencies in the alleged victim's testimony as it related to the alleged actions of the defendant.

9. The physical evidence did not corroborate or verify the alleged victim's testimony.

10. Therefore the jury's verdict is against the great weight of the evidence.

WHEREFORE the defendant prays this Honorable Court grant his Motion for Directed Verdict of Acquittal and/or his Motion for New Trial because the verdict was against the great weight of the evidence.

Dated: January 24, 1994

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  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

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PEOPLE OF THE  
STATE OF MICHIGAN,

Plaintiff,

vs

STEPHEN DENNIS TURNER,

Defendant.

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Case No. 93-63014-FC

Hon. Dennis C. Kolenda

BRIEF IN SUPPORT OF MOTION FOR DIRECTED  
VERDICT OF ACQUITTAL AND MOTION  
FOR NEW TRIAL

FACTS

The alleged victim, Lakeysha Cage, is a ten year old female. According to Miss Cage, on July 7, 1993, the co-defendant, Daniel Turner, abducted her from the steps of her apartment building. The co-defendant dragged Miss Cage to his apartment. Miss Cage was precise and definite in stating that the defendant, Stephen Turner, was neither present when Daniel abducted her nor when Daniel dragged her to his apartment.

Once inside the apartment, Lakeysha testified that she and the co-defendant, Daniel Turner, were the only persons present in the living room, the first room upon entry into the apartment. Stephen Turner was not present.

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<sup>1</sup> An unedited, non certified copy of the trial transcript, provided to counsel during trial, was relied on for the recitation of facts.

Miss Cage stated that once in the living room, the co-defendant, Daniel Turner, threw her on the mattress, got on top of her and felt her breast. Miss Cage clearly stated that Stephen Turner was not present when this happened.

However, at this point, Stephen Turner came into the living room from the bedroom and exited the apartment. Miss Cage said that Stephen Turner looked like he had just woken up. Then, according to Miss Cage, Daniel Turner took her to the bedroom located at the back of the apartment. Daniel Turner removed her shirt, laid on top of her and "urinated" on her. Miss Cage again stated clearly that Stephen Turner was not present when this happened.

At some point while Daniel Turner and Miss Cage were in the back bedroom, Stephen Turner entered the room. Miss Cage said that when Stephen Turner came into the room, Daniel Turner ordered Stephen Turner to hold her. Stephen Turner refused. And, in fact, Miss Cage said that Stephen did not hold her down. Instead, it appears that Stephen Turner wanted her out of the apartment because, according to Miss Cage, Stephen Turner told Daniel Turner, "get the bitch out of my bedroom."

After that, Miss Cage said that Daniel Turner had her try on bras and panties. Stephen Turner was not present when this happened.

Following that, Miss Cage indicated that Daniel Turner made her play video (computer) games, including "naked" poker. These games were played in the living room. Miss Cage was sitting on



Daniel Turner's lap; Daniel Turner felt her chest while she was sitting on his lap. Stephen Turner did not participate in the computer games. In fact, Miss Cage said that Stephen Turner was not even in the room at the time she and Daniel Turner played the computer games.

According to Miss Cage, while sitting on Daniel's lap, she tried to exit the apartment. But, Daniel Turner knocked her up against the wall causing her to hit her head and pass out.

Miss Cage testified that when she woke up, she was in the bedroom again and Daniel Turner was laying on top of her. Miss Cage said that during this episode, Daniel Turner felt her private part, put his penis in her mouth and ejaculated in her mouth. Stephen Turner was neither present nor did he participate in the actions attributed to Daniel Turner that occurred in the back bedroom.

Miss Cage stated that Daniel Turner told her that if she told anyone about being in his apartment, he would kill her. Miss Cage also indicated that Daniel Turner took a photograph of her and Stephen Turner. Miss Cage said that Daniel Turner put purple jelly on a knife, placed the knife in her hand so it would look like she was stabbing Stephen Turner and shot the photograph. Miss Cage also said there was jelly on Stephen Turner's shirt so it looked like he had been stabbed. Miss Cage told the jury that the picture was taken as a threat to prevent Miss Cage from telling anyone she had been inside the apartment.

Miss Cage testified that the knife definitely had jelly on it,

but she was not sure about whether there was peanut butter on the knife. Miss Cage testified that the photograph was taken with a Polaroid camera. However, she did not see the photograph that came out of the camera that day.<sup>2</sup> Miss Cage indicated that she was familiar with Polaroid cameras because her mother had one and she has used it before.

When the police became involved in the above-described incident, apartment 204 was thoroughly searched and numerous items were seized. However, no Polaroid photograph depicting the scenario created by Miss Cage was ever located. No Polaroid camera was ever located. No knife with jelly on it was ever located. No purple jelly was recovered from the apartment. No shirt belonging to Stephen Turner with jelly located on the trunk area was ever recovered.<sup>3</sup> In short, there was no physical evidence to substantiate Miss Cage's claim.

As to the Criminal Sexual Conduct in the Second Degree charge, Miss Cage originally seemed to indicate that Stephen Turner touched her breast as he dragged her out of the back bedroom by her shirt.<sup>4</sup> But when questioned further on cross-examination, Miss Cage said

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<sup>2</sup> Ms. Cage did not say that no picture existed; instead Ms. Cage indicated that she was not shown the photograph emitted from the polaroid camera.

<sup>3</sup> In fact, Miss Cage identified People's exhibit 2 as accurately reflecting how Stephen Turner appeared to her on July 7, 1993; there was no jelly stain on the trunk area of the shirt Stephen Turner was wearing.

<sup>4</sup> However Ms. Cage testified at the preliminary examination that Stephen Turner dragged her from the back bedroom by both of her hands.



that it was Daniel Turner, not Stephen Turner, who dragged her from the bedroom.

#### LAW AND ARGUMENT

If a trial court thinks that a jury's verdict is not in accordance with the evidence, the jury's error can be corrected by granting a new trial. MCR 2.611(A)(1). Every motion for a new trial on the grounds that the verdict was against the weight of the evidence, embraces a question of both law and fact - the law, as to what facts are necessary to constitute the crime, and, the fact, whether all such facts were proved at the trial. People v Adwards, 5 Mich 22 (1858); People v Nick, 360 Mich 219; 103 NW2d 435 (1960).

Generally, the question of whether a conviction is against the great weight of the evidence involves issues of creditability or circumstantial evidence. People v Harvey, 167 Mich App 734; 423 NW2d 335 (1988). Certainly this case falls within the general rule observed by the Harvey Court.

To determine whether a verdict is contrary to the great weight of the evidence, the record must be considered as a whole. People v Omacht, 328 Mich 145; 43 NW2d 305 (1950). The test is whether the guilt of the accused was proven beyond a reasonable doubt. People v Franczyk, 315 Mich 384; 24 NW2d 87 (1946); People v Jackson, 171 Mich App 191; 429 NW2d 849 (1988) (Finding not against great weight of evidence). In the instant case, considering the record as a whole, the verdict is against the great weight of the evidence and the State failed to prove the defendant guilty beyond a reasonable doubt.



CRIMINAL SEXUAL CONDUCT FIRST-DEGREE

Specifically, in this case, it must be remembered that the defendant was charged with Aiding and Abetting his brother, Daniel Turner, in committing the offense of Criminal Sexual Conduct in the First Degree. At no point during any of the testimony presented at trial, was it ever established that Stephen Turner physically assisted his brother in committing acts of sexual misconduct. It is clear that Stephen Turner was not even present during the majority of the actions testified to by Miss Cage. And again, of the times Miss Cage alleges that Stephen Turner was present, there was no testimony indicating that he physically assisted his brother or verbally encouraged his brother to commit acts of criminal sexual conduct.

The only evidence that appears to support the charge of Aiding and Abetting is the testimony concerning the "staged" photograph. Miss Cage indicated that this photograph was taken in an effort to prevent her from notifying the authorities. However, the lack of physical evidence supporting this story is conspicuous in its absence.

To underscore this point, it must be remembered that pieces of physical evidence were recovered which supported the allegations against the co-defendant, Daniel Turner. For example, the video games that Miss Cage said she played with Daniel Turner were found in the apartment. The bras and panties Miss Cage said Daniel Turner had her try on were found. The stuffed eagle Miss Cage said she saw in the bedroom was found. But again, absolutely no

evidence was found to support Miss Cage's story that Stephen Turner participated in the staged photograph.

No Polaroid camera was retrieved from the apartment. No Polaroid photograph depicting the scenario described by Miss Cage was found. No knife with jelly was found. No "purple" jelly was recovered from the apartment. No shirt alleged to have been worn by Stephen Turner with a jelly stain was recovered from the apartment.

Given the absolute lack of physical evidence, the incredibility of the photograph story is painfully obvious. And given that the photograph story is the only allegation that links Stephen Turner to aiding and abetting his brother in the commission of Criminal Sexual Conduct in the First Degree, it is clear that the verdict of guilty was against the weight of the evidence and the State failed to prove the defendant guilty beyond a reasonable doubt. Therefore, a directed verdict of acquittal should be granted. Alternatively, the Court should grant a new trial as the verdict is against the great weight of the evidence.

#### CRIMINAL SEXUAL CONDUCT SECOND DEGREE

Given the nature of Miss Cage's accusations relating to Stephen Turner's commission of an act of Criminal Sexual Conduct Second Degree, it is unlikely that there would be any corroborating physical evidence. And as expected, no physical evidence was introduced at trial to confirm Miss Cage's claim. Interestingly however, physical evidence was introduced at trial that contradicted Miss Cage's claim.



Miss Cage testified that Stephen Turner dragged her from the back bedroom by her shirt collar and grabbed her breast as he did so. The shirt Lakeysha wore on July 7, 1993 was introduced as a State's exhibit. Upon inspection of the shirt, it is clear that it was neither stretched nor torn as one would expect it to be given Miss Cage's testimony.

Despite the contradictory physical evidence, it is the incredibility and unreliability of Miss Cage's testimony relating to the Criminal Sexual Conduct Second Degree allegation that illustrates why the jury's verdict was against the great weight of the evidence. Miss Cage testified at the preliminary examination that Stephen Turner touched her breast as he dragged he by both hands, from the back bedroom. At trial, Miss Cage said she was dragged out of the bedroom by her shirt collar.

Seemingly, the testimony established that Stephen Turner did not want Miss Cage in the apartment let alone, in his bedroom. The testimony also established that Stephen Turner removed himself from his brother's criminal activity and refused to participate when ordered to do so by Daniel Turner. Therefore, it is most implausible that Stephen Turner would, amidst all of his uninvolved, grab a quick feel of Miss Cage's breast on his way out of the apartment.

Not only is Miss Cage's Statement about how her breast was touched incredible and unreliable, but so is her statement about who did it. During cross-examination, Miss Cage was asked specific questions about when and where Stephen Turner touched her on the

breast. The following questions and answers were given.<sup>5</sup>

- Q. When exactly, whether he was dragging you by both hands or by the collar of the shirt, when exactly did he touch your breast?
- A. When we was playing the video games, he touched my chest and after he touched my chest he started licking my chest.
- Q. Wait a minute, that's Dan, the man with the lipstick, right?
- A. Yes.
- Q. Are you telling us today that it was Dan who dragged you back out of the room?
- A. Who is Dan?
- Q. The man with the lipstick.
- A. Yes.
- Q. Not Stephen, the man with the beard?
- A. No.

Miss Cage clearly and unequivocally testified that Daniel Turner, not Stephen Turner, was the one who touched her breast when dragging her from the bedroom. This is of great significance, because this is the only incident ever alleging sexual misconduct by Miss Cage against Stephen Turner.

Therefore, a directed verdict of acquittal should be granted. Alternatively, the Court should grant a new trial as the verdict is against the great weight of the evidence.

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<sup>5</sup> Uncertified trial transcript pages 146 and 147.




CONCLUSION

Because of the lack of physical evidence, the inconsistencies in the alleged victim's statements and her admission during trial the Daniel Turner, not Stephen Turner, was the individual who committed the act of Criminal Sexual Conduct in the Second Degree against her, it is clear that the jury's verdict was erroneous. Therefore, the Court should enter an Order of Directed Verdict of Acquittal. Alternatively, the Court should grant a new trial as the verdict rendered was against the great weight of the evidence.

Dated: January 24, 1994

Respectfully Submitted,

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

