

S T A T E O F M I C H I G A N
IN THE DISTRICT COURT, 61ST JUDICIAL DISTRICT

THE PEOPLE OF THE
STATE OF MICHIGAN,

-v-

Circuit Court No. 93-63014-FC (A) B
District Court Nos. 93-FY-1713 &
93-FH-1714

DANIEL ARTHUR TURNER &
STEPHEN DENNIS TURNER,

Defendants.

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE JOEL P. HOEKSTRA, DISTRICT JUDGE

Grand Rapids, Michigan - July 20, 1993

APPEARANCES:

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EXHIBITS:

None

Grand Rapids, Michigan

Tuesday, July 20, 1993 - 2:15 p.m.

THE COURT: The Court takes up the cases of the State of Michigan versus Daniel Turner, here represented by Robert Mirque, Jr., and Steven Turner, represented by Tonya Krause. The State is here represented by Helen Brinkman. The matter is before the Court for preliminary examination.

Mr. Mirque, you ready to proceed?

MR. MIRQUE: Yes, your Honor.

THE COURT: Ms. Krause?

MS. KRAUSE: Yes, your Honor.

THE COURT: Ms. Brinkman?

MS. BRINKMAN: Yes, your Honor.

THE COURT: You have a preliminary matter you wish to take up with the Court?

MS. BRINKMAN: Yes, your Honor. For the victim's sake, I've noticed that several media cameras are in the courtroom. We're dealing with a ten-year-old child and a very sensitive situation. On behalf of the child, I would ask that the pictures be taken now, whatever they want be taken now, but that the cameras be removed from the courtroom during the time that she is testifying. Once she leaves and her testimony is completed, I have no problem with the cameras being in the courtroom at that time. But for her benefit and at her request, I would ask that neither

her name be used nor her likeness, and that no cameras be in the courtroom while she testifies.

THE COURT: Mr. Mirque?

MR. MIRQUE: Mr. Turner has no objection to that, your Honor.

MS. KRAUSE: No objections, your Honor.

THE COURT: All right. The Court is of the opinion, in view of the age of the witness and the nature of the charges that are alleged here, that it would be inappropriate and not in the best interest of the child to permit cameras in the courtroom during her testimony. So it's the order of the Court, for those reasons, that the cameras be removed during the time of her testimony, and after her testimony is completed we'll afford the media the opportunity to, before we do anything else, to put the cameras back in position if they so choose.

I assume she's your first witness at this point?

MS. BRINKMAN: Yes, your Honor.

THE COURT: Okay. So at this time the cameras are ordered to be removed from the courtroom, and we'll send word to you when her testimony is completed and you can come back in at that time. Thank you.

Ms. Brinkman.

MS. BRINKMAN: Thank you, your Honor. I would call Lakeysha Cage to the stand, and I'll go retrieve her from my

office.

THE COURT: Just for your benefit--or Laurie, will you just--that podium is hung up underneath those chairs. If they're gonna move it--can you just take the cord from underneath the chairs? Thank you.

Just remain standing for a moment and raise your right hand, please, okay?

You do solemnly swear that the testimony you give in the proceedings now before the Court that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

MS. CAGE: Yes.

THE COURT: Okay, thank you. Be seated, please. You need to know that that microphone in front of you tape records your voice, but it's not a microphone that amplifies your voice, okay? You also need to know that everybody in the courtroom needs to hear what you have to say, so speak right up, and speak loudly. Also, we'll go at your speed. If you need a break, or if you need to gather yourself, just let me know and we can rest for a minute, okay?

All right, Ms. Brinkman.

MS. BRINKMAN: Thank you, your Honor.

LAKEYSHA CARMELLA CAGE

called by the People at 2:19 p.m., and sworn by the Court, testified:

DIRECT EXAMINATION

BY MS. BRINKMAN:

Q Lakeysha, will you tell the Court your full name?

A Lakeysha Carmella Cage.

Q How old are you?

A Ten.

Q All right. Now back on, let's see, what day was it? On July 7th of 1993, where did you live back then?

A Here?

Q Where did you live back on the date that this happened?

A Oak Park.

Q Oak Park. Is that a house or is that an apartment complex?

A Apartment.

Q Okay. That day, where were you playing?

A By the stairs.

Q By the stairs? By your house?

A Yes.

Q What were you playing?

A I was making something out of sticks and rubber bands.

Q Tell us what's the next thing that happens.

A I was sitting--I was getting ready to get up, and the man with the lipstick, he camed (sic) and grabbed me.

Q Okay. I can barely hear you, so I want you just--I'm gonna back up just a little bit so that you have to talk a little bit louder for me to hear you, okay? All right, what did

you say happened?

A I was making something out of sticks and rubber bands, and then the man with the lipstick, he came and grabbed me and dragged me to the apartment.

Q The man with the lipstick, is that man anywhere in this courtroom?

A Yes.

Q Could you please point to him so the Judge knows who you're talking about? Okay, which one? There's three men over there. One's closest to the wall, then there's the number two person, and then there's the third man in. Which one is it? Is it the first man in?

A No, second.

Q The second man, okay.

MS. BRINKMAN: May the record reflect, your Honor, that she's indicated, I believe, Daniel Turner?

THE COURT: Without objections, the record will indicate that identification.

MS. BRINKMAN: Thank you.

BY MS. BRINKMAN:

Q Okay, and he was wearing lipstick at the time, did you say?

A Mm-hmm.

Q What color lipstick, do you remember?

A Red.

Q All right. Tell us what happens. What does he do?

A He takes off--he took me to the room and takes off my clothes.

Q What room?

A The back.

Q The back room? Where? In your house?

A No.

Q Do you remember where he took you?

A In his apartment.

Q His apartment. Is that a different apartment complex, or is that the same apartment complex?

A Same.

Q Same one? Different apartment?

A Mm-hmm.

Q Okay. And inside--do you go inside his apartment?

A Mm-hmm.

Q Do you know what number that apartment was?

A No.

Q Okay, you go inside his apartment. Where does he take you inside the apartment?

A Room.

Q A room? Do you know what kind of room it was that he took you to?

A Bedroom.

Q Bedroom. Tell us what happens.

A He takes off my clothes, and he feels on my chest.

Q How--how much of your clothes does he take off?

A My shirt and my pants.

Q Okay. So you were wearing a shirt and pants? Were you wearing anything else other than just a shirt and a pair of pants?

A No.

Q Were you wearing underwear?

A Yeah.

Q Okay. Did he--he took off your shirt and your pants. What about your underwear?

A Not yet.

Q I'm sorry.

A Not yet.

Q Not yet, okay. So you still have your underpants on. What happens after he takes off your shirt and your pants?

A He gets on top of me, and then he uses the bathroom, and after that he takes off my underwear.

Q Okay, he gets on top of you. How does he get on top of you? What do you mean by get on top of you?

A Like where?

Q Well, what position is he in on top of you?

A He's. . .

Q Is he standing, sitting, or laying?

A Sitting.

Q Where is he sitting?

A On my private part right--

Q On your private part? Where were his legs?

A One like this, going like this way, towards coming like this way.

Q On the--

MS. BRINKMAN: May the record reflect she's pointing to the side of her hips, and she said, "Sort of coming," and she's pointing toward her chest. Is that right?

THE WITNESS: Yeah.

THE COURT: Well, he's facing you? You're looking at his face?

THE WITNESS: Yes.

THE COURT: And are you--what position are you in?

THE WITNESS: Laying.

THE COURT: And on your stomach, your back, your side, what?

THE WITNESS: Back.

THE COURT: On your back? And he's sitting on your--over your private parts with his legs on either side of you?

THE WITNESS: Mm-hmm. Yes.

THE COURT: Okay.

BY MS. BRINKMAN:

Q What is he doing when he's doing that?

A He's feeling on my chest.

Q Feeling on your chest with what?

A His hands.

Q Did he do anything else while he's sitting on your privates?

A No.

Q What about his clothes? Did he have his clothes on or off?

A Off.

Q He had his clothes off?

A Yes.

Q What clothes did he have off?

A Shirt, pants, that's all.

Q What about his--did he have underpants on?

A Yes.

Q Did he have those off?

A No.

Q No? He had those on?

A Mm-hmm.

Q While he's sitting on top of you?

A Yes.

Q Okay. What's the next--he feels on your chest. Does he do anything else?

A No.

Q What's the next thing that happens?

A His brother came in, and he told his brother to hold me down, but his brother didn't. He told his brother--he told his brother to take me and--he told his brother to come and

hold me down. And then his brother says no, and then he--after that he told--he told his brother to drag me into the other room.

Q Okay, you said his brother. Is his brother anywhere in this courtroom?

A Yes.

Q Could you please point to him so the Judge knows who you're talking about? Okay, which one is he? Is he the first man, the second--

A Third.

Q The third man?

(No verbal response.)

I can't hear you.

A Yes.

Q Which one?

A The third.

Q The third man.

MS. BRINKMAN: May the record reflect, your Honor, that she's identified Stephen Turner.

MS. KRAUSE: No objection.

THE COURT: It may, then, without objection.

BY MS. BRINKMAN:

Q Okay, now you said that he told the brother to do something. What did he tell the brother to do?

A Hold me down.

Q Did he do that?

A No.

Q What does he do?

A He drags me into the--the living room.

Q Okay. And this is the brother that takes you into the living room?

A Yes.

Q What does the brother do in that living room?

A He--he holds me down and feels on my chest. He holds me down with one hand, and he feels on my chest with the other.

Q Okay. What position were you on--in when he did that?

A Laying straight on my back.

Q On--were you laying on anything?

A On a bed.

Q On a bed. There was a bed in the living room?

A Yes.

Q Okay. So on the bed he held you down with one hand, and he felt your chest with the other, right?

A Yes.

Q Tell me, does he do anything else while he's doing that?

A No.

Q Does he touch you anywhere else?

A No.

Q What happens next?

A His brother, the man with the lipstick, he has me to play a

game.

Q The man with the lipstick, that's the first man that you told us about?

A Yes.

Q He asked you to play a game?

A Mm-hmm.

Q What kind of game?

A A poker game.

Q How were you playing--how were you gonna play this poker game? I mean, was it with cards?

A No.

Q Tell us about that.

A It was with a stick.

Q A stick?

A A video stick.

Q A video stick, okay. What--it was a--well, you tell me, what was it? What kind of game was it?

A It was a game that you--if you win you--and you want him to take off a part of his clothes, it tells you. And then it'll blank over, and then he'll take off his vest, or something like that.

Q Who's vest would come off?

A The man with the--the man that I'm playing against.

Q The man that you're playing against? And was that a real man or--

A A video man. It's just a video.

Q A video man, okay. And were you playing this on a TV set?

A No, it was a TV that if you--it's for someone's--it's to show you of someone that's stealing.

Q I'm sorry, I didn't hear you.

A It's to show you have someone that's stealing.

Q That's stealing?

A Mm-hmm, it 'posed to be in a store, or something like that.

Q Oh, okay. So it's not a TV?

A No.

Q What do you call that thing?

A A camera.

Q A camera?

A A camera TV.

Q A camera TV, okay. And you played with a video stick?

A Mm-hmm.

Q Did you play the game?

A Yes.

Q And did anybody else play with you?

A No.

Q You played it all by yourself?

A Uh-huh.

Q Was anybody else there with you when you were playing?

A Yes.

Q Who was there with you?

A The man with the lipstick.

Q The man with the lipstick. And where was he while you were playing this video game?

A I was sitting on his lap.

Q What was he doing while you were playing the video game?

A Feeling on my chest.

Q Anywhere else?

A No.

Q He didn't touch you anywhere else while you're playing the video game?

A No.

Q All right. When you got done with the video game what happens?

A I told him that my mom was at home, and he told me that he didn't care. And so he pulled--he threw me on the bed that was in the living room. He pulled down my pants, and then he started sucking on my private part.

Q Where was the brother when this was happening?

A In the room.

Q He was in the room? And he did what to your private part?

A Suck--sucks my private part.

Q All right. Where is--when you say private part, where is that on your body?

A On the front.

Q Okay. I don't think the Judge saw what you did.

A In the front, right. . .

MS. BRINKMAN: May the record reflect that she's pointing down to her pubic area, down in her lap?

THE COURT: It may.

BY MS. BRINKMAN:

Q What hap--does he do anything else when he sucks on your private part?

A He puts his private part in my mouth.

Q He puts his private part in your mouth?

A Mm-hmm.

Q Okay. Does anything happen when he does that?

A Mm-hmm.

Q What happens?

A Some white stuff goes in my mouth.

Q What did you do about that?

(The Witness cries.)

Do you want to take a break and get a glass of water?

A Yes.

MS. BRINKMAN: Maybe she wants to step out for a minute.

THE COURT: We'll take a break.

(At 2:30 p.m. the Witness leaves the witness stand.)

Just stay there, ma'am, we're--it's all right.

(At 2:32 p.m. the Witness returns to the witness stand.)

BY MS. BRINKMAN:

Q Did he do anything else during the time that you were on that bed? Did he touch you anywhere else?

A No.

Q What happens after that?

A He asked me was anybody at my house, and I said yes, and he told me not to tell anyone, so I didn't.

Q What happens then?

A I--I went home. I didn't go home because I was scared that I was gonna get in trouble.

Q Okay. Before you go home, did they do anything else? You said that you saw some kind of TV there. Did they do anything else while they were--you were there, or make you do anything else?

A No.

Q Did anybody--did you have any silverware when you were in there?

A Yes.

Q Tell us about that.

A It was a camera behind the TV.

Q There was a camera behind the TV?

A Mm-hmm.

Q Okay.

A That's when I was--that's when he had me trying on bras and some shirts and stuff.

Q Who had you doing these?

A The man with the lipstick?

Q Okay. You talked about when you were in the bedroom, and you talked about when you were in the living room and playing the game. When did this happen? When did he have you do that?

A Before--well, when his brother had brung me back in the room.

Q In which room?

A In the living room.

Q Okay. So it was when you went into the living room that he had you do this?

A No.

Q I'm sorry.

A When--when I was--when I was going--I was getting ready to go over my friend's, India.

Q Oh, before you left?

A Uh-huh.

Q What kind of things did he have you put on?

A A exercising shirt, the short that goes up to right here.

MS. BRINKMAN: Okay. May the record reflect she's indicating immediately under the breast area?

THE COURT: All right.

BY MS. BRINKMAN:

Q What else?

A And a bra. Three or two bra sets.

Q Anything different about those bras?

A No.

Q Okay. What about this camera?

A I had--he--his brother, he wanted me to stab his brother, but I didn't, and he had the knife, and--

Q Who had the knife?

A He--the man with the lipstick. And he had put it in my hand, and he had--he had his brother up against the wall, and he--and he took a picture of me wanting to stab his brother.

Q Do you know why he had--he took a picture of you with the knife in your hand with his brother?

A Yes.

Q Why?

A Because if I woulda told, the policeman wouldn't have believe me, they would've believed him.

Q Okay. And did there ever come a time when you left that place? Did they let you go?

A Yes.

Q Did they tell you anything before they let you go?

A Yes.

Q What?

A Not to tell anyone.

Q What would happen if you would tell?

A If they catch me they were gonna kill me.

Q Do you leave?

A Yes.

Q Where do you go?

A I was--I was gonna walk around the building, for if my mom and dad woulda saw me as they wouldn't know I went anywhere.

Q Why were you worried about that?

A Because I was gonna get in trouble.

Q How come?

A Because I didn't supposed to leave.

Q Tell us what happens then.

A I saw my friend India, and she said that--that she was mad at me, and I asked her for what. She said because I never come out that much.

Q Okay. Do you know India's last name?

A Harris.

Q Harris? Does she live in the same apartments that you do?

A No.

Q Oh, okay. So what happens then?

A I went over her house, and she asks me what was wrong, and I didn't tell her. And she kept on asking me, and I told her, and then she told Cynthia's mom, and Cynthia's mom said that she was gonna go--

MS. KRAUSE: Your Honor, I'm going to object to what Cynthia's mother said as hearsay.

MS. BRINKMAN: Your Honor, I don't believe it's offered for the truth of the matter. It simply shows what happens next and why.

THE COURT: Well, I don't think we need to--I think you can do that without her having to testify to it directly.

MS. BRINKMAN: All right.

BY MS. BRINKMAN:

Q You can't tell us what Cynthia's mom said, but what happens next?

A She--she--she asks me what was wrong, and she--and she was gonna go put on her shoes, but I left.

Q Okay. Where did you go?

A I went over by the bushes.

Q Why'd you go to the bushes?

A Because I was scared.

Q What happens then?

A India kept on running over there and telling me that Cynthia mom's want--Cynthia mom wants me.

Q What happens then?

A And I never--I never came, and then I told her that I didn't wanna go.

Q Then what happens?

A India was getting ready to go over--over across the street

again, but my mom saw her and my mom asked her have she saw--have she seen me, and India told my mom that I was over by the bushes.

Q Then what happens?

A My mom tells me to come here, and I didn't. And then she tells me again, then I came over. And she asked me what was wrong, and I tell her that man, he was feeling on me.

Q Did you tell your mom where this man lived?

A Uh-huh.

Q How did you tell your mom where?

A I pointed.

MS. BRINKMAN: Okay. Your Honor, I think I will have to call one more witness for date and venue, but I think I've asked this wit--I'm done with direct with this Witness.

THE COURT: All right. Mr. Mirque or Ms. Krause?

MS. KRAUSE: Your Honor, if it's acceptable to the Court, I will go first.

THE COURT: You may.

CROSS-EXAMINATION

BY MS. KRAUSE:

Q Hi, Lakeysha.

A Hi.

Q My name is Tonya Krause, and I have to ask you some questions now, okay? Do you wanna take a break before we start?

A Yes.

MS. KRAUSE: Okay. Is that acceptable to the Court?

THE COURT: Certainly. Why don't we just take a five--
minute recess. You can go back, step down.

(At 2:40 p.m. Court is in recess, and reconvenes at
2:47 p.m.)

You may proceed, Ms. Krause.

BY MS. KRAUSE:

Q Ready?

A Yes.

Q I'll try to be short, okay? All right. By the way, I like
the color of your dress.

A Thanks.

Q How long had you lived at Oak Park Apartments?

A Two weeks or three.

Q Just a few weeks then?

A Yeah.

Q Okay. Had you seen either of these men before?

A Yes.

Q Okay. Without telling me necessarily--are you cold?

A Yes.

Q Okay. Had you ever heard anybody in the neighborhood or in
the apartment complex talk about these guys?

A Mm-hmm.

Q Is that a yes?

A Yes.

Q Have to say yes or no, honey, okay? Were these good things or bad things that you had heard?

A Bad.

Q Did people make fun of them?

A No, they just talked about 'em.

Q Okay. What kind of bad things did you hear them called?

A That little girl that--it was a girl that was sitting on a rock, and she--they--the man with the lipstick came past, and she said, "That's the man who did something to my sister." And then I said, "Uh-uh," and then he say, "Watch and see. He'll catch you one day."

Q Excuse me, honey, did they--did you hear anyone call them names?

A No.

Q Okay. But just bad things about them? Is that--was that a yes?

A Yes.

Q Shake your head yes, okay. Now this event took place on July 7th, is that what you remember?

A Yes.

Q That it was July 7th? And you were outside playing on the steps?

A Yes.

Q Were those the steps to your apartment door?

A Yes.

Q How far away was the apartment that the man with the lipstick took you into?

A Five.

Q Five what? Five doors?

A Yeah.

Q Five doors away from yours?

A Yes.

Q I believe you said you were playing with some sticks outside.

A Mm-hmm.

Q Do you have any brothers or sisters?

A Yes.

Q How many?

A One sister.

Q Is that all?

A Uh-huh.

Q Okay. Was your sister outside playing with you?

A No, she was inside--

Q Were you by--

A --playing with her dolls.

Q I'm sorry, hon.

A She was inside playing with her dolls.

Q With her dolls?

A Uh-huh.

Q You were outside by yourself?

A Yes.

Q And you said that the man with the lipstick came up to you?

A Yes.

Q While you were playing?

A Yes.

Q Was he alone?

A Yes.

Q When you first went into his apartment, the man with the lipstick, his apartment, was anybody else in the apartment?

A No.

Q You couldn't see anybody in the apartment?

A No.

Q When you open the apartment door, or when the apartment door is opened, are you in the front of the apartment or the back?

A Front.

Q And where did you go from there?

A Way to the back room.

Q So farthest away from the door you went into?

A Yes.

Q And while you were going from the front of the apartment to the back of the apartment you didn't see anybody else?

A No.

Q Okay. The back room that you went into, did that have a

door?

A Yes.

Q Was the door open or shut once the two of you got into the apartment? I'm sorry, into that back room.

A Open.

Q Was it open the entire time you were in that room with the man with the lipstick?

A Yes.

Q As best as you can tell us, how long were you in the back room before the brother came in?

A One or--

Q Did it seem like a short time or a long time?

A Short.

Q Five minutes?

A No, short. It was a short time.

Q Okay. And when he came in, when the brother came into the room, the man with the lipstick asked him to do something, right?

A Yes.

Q And that was to hold you down?

A Yes.

Q And the brother told the man with the lipstick he wasn't going to do that, right?

A Yes.

Q And he--did the brother hold you down at all while you were

in the back bedroom?

A No.

Q Did you actually see the brother leave the back bedroom?

A Which one?

Q All right, you've described two men. One had red lipstick on, right?

A Yes.

Q And he's the one who took you into the back bedroom.

A Yes.

Q And while you were in the back bedroom his brother came in.

A Yes.

Q Did the brother have lipstick on?

A No.

Q Okay. So maybe it'd be easier if we talk about the man with lipstick and the man without lipstick. Would that be easier for you?

A Yes.

Q Okay, good. Did the man with the lipstick leave the back room?

A Yes.

Q And when he left the room, you and the man with the lipstick were still in the room?

A No.

Q No, you guys left at the same time?

A No.

Q Okay. Tell me what happened.

A The man with the lipstick, he was in the room putting back on his clothes, and the other brother, he dragged me into the other room and he threw me my clothes, so I put 'em on.

Q Okay. When you say he dragged you, can you tell us what you mean by that?

A Dragged me by both of my hands.

Q Where--was he dragging you on the ground?

A Yes.

Q Okay. And then he gave you your clothes?

A Yes.

Q The man without the lipstick?

A Yes.

Q All right. All right, at that point when the man without the lipstick gave you your clothes, you were in the living room?

A Yes.

Q Do I understand that correctly?

A Yes.

Q And then the man with the lipstick came into the living room also?

A Yes.

Q The man with the lipstick had you play--

A Poker.

Q Poker--

A A poker game.

Q --on a video screen?

A Mm-hmm.

Q But that was not a regular TV you said?

A No.

Q So this was not a VCR that was playing?

A No.

Q You were sitting on the man with lipstick's lap?

A Yes.

Q While you played the video poker?

A Yes.

Q Where was the man without the lipstick?

A In the bedroom.

Q Bedroom?

A Yes.

Q The room that you had just been in, or a different room?

A The room that I had just been in.

Q I bet you were pretty scared, weren't you?

A Yes.

Q Were you hoping that the man without lipstick would help you?

A Yes.

Q When you first saw him?

A Yes.

Q Did the man without the lipstick stay in the back bedroom--

A No.

Q --while you played video poker?

A No.

Q Okay. He--when did he come back out?

A He left. When he came back out he left.

Q He left the apartment?

A Yes.

Q Okay. Lakeysha, before all of this happened, you said that you had seen these guys before, right?

A Yes.

Q And you'd heard people say bad things about them before?

A Yes.

Q Did you know before this happened that these two were brothers?

A No, but I asked our--our manager.

Q Afterwards?

A Yes.

Q After all of this happened is when you found that out?

A Not afterwards, but before, I had asked was the man with the lipstick a woman or a lady, and he said that was a man.

And--

Q Oh, so you asked the manager that before all of this happened?

A Yes.

Q Okay.

A I asked the woman manager, and she said it was a man that--and he had a brother, that had a brother, that they stayed with each other.

Q Okay. And that's when you found out they were brothers?

A Yes.

Q Okay. Now you said the man without the lipstick left the apartment, right?

A Yes.

Q Okay. Was it after he left the apartment that the man with lipstick, I think you said he sucked your private part?

A Yes.

Q His brother had left when the man with lipstick did that?

A Yes.

Q Okay. And when he put his private part in your mouth the brother had already left?

A Yes.

Q Okay. Lakeysa, you told us today that the man with the lipstick had put a knife in your hand?

A Yes.

Q Okay. Could you describe that knife for us?

A It was in the peanut butter jar.

Q So was it a regular eating knife?

A A--

Q The kind that you'd use for dinner?

A It was a but--a butter knife.

Q A butter knife? So it had a smooth blade?

A Yes.

Q Okay. And you had seen it in the peanut butter jar?

A Yes.

Q Was there actually peanut butter on it then?

A Yes.

Q Oh, okay. So if I understand it, the man with the lipstick wanted you to stab his brother with the knife?

A Yes.

Q Was the man with the lipstick mad at his brother?

A No.

Q When you left the apartment that day was the man without the lipstick still gone?

(No verbal response.)

To the best you can remember.

A No.

Q Okay. So he came back again while you were still there?

A No.

Q Okay, so he was gone when you left?

A Yes.

MS. KRAUSE: Okay. No further questions.

THE COURT: Mr. Mirque.

MR. MIRQUE: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. MIRQUE:

Q Hi, Lakeysha.

A Hi.

Q My name is Rob. I'm just gonna ask you some questions, just like Tonya did, so I don't wanna make you nervous or anything, but I just ask that you speak up so that we can all hear you, okay?

A Yes.

Q Okay. Lakeysha, after you left the apartment, did you go and speak to your friend India right afterwards?

A Yes.

Q Okay. Where was India at that time?

A She was over by the grass.

Q Who's grass was she by?

A It was where I stayed at, where me and India is friends, we'll play games and stuff.

Q Are you and India good friends?

A Yes.

Q And you said that India was mad at you because you weren't speaking with her, or she thought you weren't speaking with her?

A She wasn't really mad at me. She was just playing with me, and she said, "I'm mad at you because you don't hardly come outside." And I say, "I do come outside and play with you." And then she said, "Psyche."

Q After you two talked, did you--what happened then?

A We went to her house.

Q Okay. And what did you talk about when you were at her house?

A When Cynthia was coming back and stuff.

Q How long were you at India's house?

A 'Bout two or one minute.

Q One or two minutes?

A Mm-hmm.

Q Not very long?

A No.

Q Okay. Now have you seen either of these two guys in the neighborhood?

A Yes.

Q And did you see them wearing dresses sometimes?

A No, but I seen one wearing a short shirt.

Q Have you ever seen the guy with the--who you say had lipstick on ever wear a dress?

A No.

Q Did you ever hear anybody say that the guy with the lipstick wore a dress?

A No.

Q You didn't kinda giggle if you had heard that these guys wear dresses?

A Well, I laugh when me and my little sister, we--we used to run past the window, and every time we saw 'em with a short

shirt we'll go back and laugh.

Q What did you see when you ran past those windows? Did you see 'em in sort of funny clothes?

A Yes.

Q Yeah. You and your little sister used to run back and forth, and sorta try to sneak a look?

A Yeah.

Q Okay. Did your parents know that you were sort of sneaking looks at these two guys?

A No, we--well, I told my little sister that I was gonna get a camera and take pictures of 'em, and she start giggling at me.

Q Did your parents ever say never to go to those guys house because they're kind of strange?

A Well, they--I told my dad that a man downstairs was strange, and--and--and that he looks at me weird, and my dad said not to go there. And then he said don't--my mom and dad tells me not to talk to strangers, and not to go--go over their house or in.

Q Sure, sure. Did your daddy ever say what would happen if he ever caught you down there?

A Yes.

Q What did he say he would do to you?

A If he woulda caught me down there?

Q Yeah. Did he ever tell you what would happen?

A No, he never--he never told me what would happen if--if he caught me down there, but he told me what would happen if they--if I go in their house and stuff like that.

Q What did he say that they would--he would do to you?

A Nothing. He didn't say nothing like that.

Q Okay. Were you and your little sister trying to run past back and forth this window the night before that this all happened?

A Well, we only--we--when my mom--when my mom and dad, when they're sleeping, we only can stay by the apartments and stuff. We'll like go over--go to get Nicky, and then we'll run--then we'll walk past there, and then we'll see. And then before we knock on Nicky door we'll walk past again, and then we'll walk past again, and then we'll go to get Nicky. And we'll tell Nicky, and then me and Nick--me and Nicky and my little sister'll start laughing.

Q Who is this Nicky friend of yours?

A She--she's the manager's grandchild.

Q Was she anywhere around that next day? During the day that this had all happened, was she there? Was she--

A No, she wasn't at--she wasn't there. Her mom had the day off so she spent time with her mom.

Q Okay. Lakeysha, do you remember telling the police officers that you banged your head while you were in the apartment?

A Yes.

Q When did that happen?

A When we was coming--when we was coming past--when we was coming past the table.

Q Coming past the table? Where was this table?

A When you first walk in the door it's a radio and some stuff on the table.

Q Okay. And how did you hit your head?

A I was trying to get away, and then he banged my head, and up against the wall, and I hit my ankle and I had a sore on it, and it didn't wake up.

Q Who--who did this to you? Was it the man with the lipstick, or was it the other guy?

A The man with the lipstick.

Q Okay. And you said you woke up. Were you knocked out?

A I don't know.

Q Don't know?

A I don't remember.

Q Okay. But you do remember hitting your head?

A Mm-hmm.

Q And did it--where did you hit it?

A Right on my side right here.

Q Did it hurt a lot?

A Yes.

Q Do you know--do you remember if you felt a bump there, or goozle (sic), or--

A No, but I had a headache.

Q You had a headache, okay. Was there any blood?

A No, but on my ankle it was green when I--

Q Your ankle was bleeding?

A My ankle was green when I checked it.

Q Oh, okay. Do you remember talking to the police officer, saying that the man with the lipstick urinated on you?

A Yes.

Q And where did that happen?

A In the back room.

Q In the back room, okay. Was there a--where in the back room did he do this?

A On the bed.

Q On the bed?

A Yes.

Q Were there sheets on the bed do you recall?

A Yes.

MR. MIRQUE: Okay. I have no further questions, your Honor.

THE COURT: Ms. Brinkman?

MS. BRINKMAN: Thank you.

REDIRECT EXAMINATION

BY MS. BRINKMAN:

Q Lakeysha, I'm only gonna ask you a couple of questions. You said that this--they took a picture of you with the butter

knife? Right before you left or not?

A Before, when he asked me was anyone at my house.

Q All right. And the brother was there then?

A Yes.

Q Was that before or after he put his--he put his private in your mouth?

A After, 'cause he had just came out the room.

Q After because who just came out the room?

A The man without the lipstick, and after--after he got done taking a picture of me with the knife he had left.

Q Okay. So when the man with the lipstick had his private in your mouth, where was the brother?

A In the back room.

Q Was the door open or shut?

A Shut.

Q All right. And before that did the brother touch you anywhere? Any time before the man with the lipstick put his private in your mouth?

A Yes.

Q Okay. Where did he touch you?

A On my chest.

MS. BRINKMAN: Nothing further.

MS. KRAUSE: I have nothing further, your Honor.

THE COURT: Mr. Mirque?

MR. MIRQUE: No, your Honor.

THE COURT: All right, thank you. You may step down.

(At 3:10 p.m. the Witness stepped down.)

MS. BRINKMAN: We would call Cynthia Marble to the stand.

THE COURT: Wait, we have to resume with cameras. I also have a question from my jury, so. . .

MS. BRINKMAN: Okay. It may be that they may stipulate to date and venue. Okay, we may not have to call Cynthia.

THE COURT: Before we do anything else, we'll invite the photographer and the cameramen back in the courtroom.

Ready? All right, there's gonna be a stipulation, is that correct?

MS. BRINKMAN: The way I understand it, they'll stipulate to the date and venue. She did not remember--

THE COURT: That this happened within the City of Grand Rapids on July 7th? Okay, Mr. Mirque?

MR. MIRQUE: No objection to that stipulation.

THE COURT: Ms. Krause?

MS. KRAUSE: We agree to stipulate to that, your Honor.

THE COURT: All right. Any other proofs from the State, Ms. Brinkman?

MS. BRINKMAN: No, thank you. The State rests.

THE COURT: Mr. Mirque, any proofs on behalf of your client?

MR. MIRQUE: Not at this time, your Honor.

THE COURT: Ms. Krause, any proofs?

MS. KRAUSE: No, your Honor.

THE COURT: All right, we'll entertain motions at this point, Ms. Brinkman.

MS. BRINKMAN: Thank you, your Honor. Again, on a probable cause basis, we've offered the testimony of Lakeysa Cage. She testified quite frankly that this happened. She identified both Defendants in the courtroom as the persons who did this to her. On--we have stipulations to the date and the place. We've charged Daniel with two counts of criminal sexual conduct in the first degree and child enticement. It appears that she was forcibly taken away from her front porch and taken to the apartment of these two individuals. It's been stipulated that Oak Park in the City of Grand Rapids, that in there Daniel disrobed her and fondled her breasts, and then eventually committed two acts of criminal sexual conduct in the first degree, one by placing his mouth, performing cunnilingus on her private parts, as she calls 'em, on her vagina, and the other one he placed his penis inside her mouth.

During this time Stephen was in the room, and prior to the penetration Stephen had also engaged in sexual fondling of Lakeysa and was participating in the sexual contact up until that point when the penetration occurred. He's an

aider and abettor. While he wasn't in the same room at the time the penetration occurred, your Honor, he was still encouraging, aiding, and assisting in the act that was performed by the brother. He knew what was going on, therefore we'd ask that he be bound over on one count of criminal sexual conduct in the first degree as an aider and abettor.

THE COURT: You're referring to Stephen now?

MS. BRINKMAN: Yes, I was. We charged him with criminal sexual conduct in the second degree. He was fondling her breasts prior to this, and we charged him as an aider and abettor, criminal sexual conduct in the first degree, and aiding, or encouraging, or participating in the sex contact prior to the penetration that occurred. And also, as she testified, afterward a photograph was taken of her holding a knife against Stephen so that they would have a photograph of her. They indicated that that way the police would not believe her if she told. Your Honor, we submit that that was done so that the child would believe that it would look like she was the aggressor in the situation, and a child knowing that a photograph was taken of her in that situation was some type of way to make her believe that she couldn't go and tell the police that Stephen participated in that. I believe, again, it all goes to an aiding and abetting theory.

THE COURT: Ms. Krause?

MS. KRAUSE: Thank you, your Honor. My client, Stephen Turner, has not been charged in any way with the child enticement. I will not address that issue as Ms. Brinkman is not attempting to add that count.

As to the count three--excuse me, count four against Mr. Stephen Turner, criminal sexual conduct in the second degree, I object to bind-over without argument.

As to count two, Ms. Brinkman has argued that she believes she's met her probable cause burden.

THE COURT: Wait, just--you're talking about count four, the second degree CSC count?

MS. KRAUSE: Correct, that I object without argument.

THE COURT: Right, okay.

MS. KRAUSE: As to count two, Ms. Brinkman has just argued to this Court that Stephen Turner should be bound over on criminal sexual conduct in the first degree on an aiding and abetting theory. As I recall this young child's testimony, she indicated that at one point my client, the man without the lipstick, came in to the bedroom. The man with the lipstick asked him to assist, at which point my client refused. So in that instance there was no aiding and abetting, encouraging, or anything of that nature.

The testimony as to what happened in the living room as to the oral sex is somewhat confusing as to whether or not

my client had already left the apartment or not. I believe that my client had left the apartment. That is the testimony and the way she answered my questions as to that. There is no testimony whatsoever that Stephen Turner aided, abetted, or encouraged Daniel Turner in any oral sex that occurred in the living room, therefore I do not believe that the Prosecutor has met it's probable cause burden as to that count, and for those reasons I believe that the CSC first count against my client should be dismissed. Thank you.

THE COURT: Thank you. Mr. Mirque?

MR. MIRQUE: Yes, your Honor. As far as count one of the enticement, or what should be called kidnapping a child under fourteen years, we are objecting without argument.

Counts two and three, the CSC first, the victim in this case has testified that on one occasion there was contact with mouth to vagina parts, however there was not the key statement from the victim that there was actual penetration involved. On that basis, we find that the bind-over for CSC first in that instance would be improper.

Secondly, as to count three, CSC first, if we are to accept the young lady's testimony that there was oral sex, we object without argument. Thank you, your Honor.

THE COURT: Thank you.

MS. BRINKMAN: If I could briefly respond? Your Honor, as to Ms. Krause's argument that his refusal to hold her

down, well, your Honor, immediately after that he drags her into the living and begins fondling her breast and then assists--is in the room while the penetration occurred, and then assists in helping his brother reinforce on this child not to tell about the penetrations and participatés in that. Again, I believe that's all part of an aiding and abetting theory. We're charging him as encouraging and assisting in the crime, not for literally holding down the child during the penetration. I wanted to clarify that.

Also, as to Mr. Mirque's argument that there was no actual penetration, cunnilingus, under the statute, is defined as penetration, that no actual entry of the tongue into the vagina is required. Cunnilingus, as it's defined, is penetration.

MR. MIRQUE: May I respond, your Honor?

THE COURT: Yes.

MR. MIRQUE: Well, I don't differ in the definition of cunnilingus being confined to the statute, there is some question as to whether that's what's actually occurred. The victim testified that there was sucking involved, and that is not by definition cunnilingus, which would involve the insertion of the tongue into the vagina. It's from that basis that the CSC first would be improper.

MS. BRINKMAN: If the Court requires cases, I believe there's also case law that indicates that any penetration

beyond the outer large lips, which are the labia majora, is penetration under the law.

MR. MIRQUE: Your Honor?

THE COURT: I've heard enough on that issue, thank you.

MR. MIRQUE: Okay.

THE COURT: What I'm looking for is the definition section of the statute and I don't have that. Anybody happen to have that in the courtroom?

MS. KRAUSE: Yes, your Honor.

THE COURT: Thank you. Sexual penetration is defined by statute to mean sexual intercourse, cunnilingus, fellatio, it goes on from there. But a mere act of cunnilingus, which in this Court's opinion, the testimony of the victim described did occur, in the Court's opinion, as a separate sexual act of penetration. So the Court would resolve that issue in favor of the State, believing that factually the testimony of the victim here described an act of cunnilingus.

The other issue that's addressed here is whether or not Stephen Turner can be charged as an aider and abettor. Obviously, the favorable parts of the testimony are pointed out by both sides. The determining factor in the Court's judgment is that the acts of sexual penetration occur after a point of time where Mr. Stephen Turner has already himself engaged in an act of sexual contact with the victim, and

after a time when he has participated in moving the child forcibly from one room to the other, and also, and I'm not quite clear in my mind where this occurs in the sequence, but there is evidence at some point in time, either just before or just after the actual acts of penetration, where he participates in staging a photograph with his brother that is used to, in my opinion, induce fear into the child's mind that would prevent her from revealing to anyone what happened to her. Consequently, the Court is of the opinion that at a minimum, that he is an aider and abettor to the acts of sexual penetration that were testified to as having been perpetrated on the victim by the brother, Daniel.

Having resolved those issues, the Court will state that having listened to the evidence presented by the State through it's witness and by virtue of the stipulation that has been agreed to by the parties, I find that the offenses alleged by the State, which are offenses not cognizable by this Court, have been committed, and that there's probable and reasonable grounds to believe that the Defendants here present, Daniel Turner and Stephen Turner, committed those offenses. The Court therefore orders at this time that they be bound over to the circuit court of this county, there to be arraigned on an information alleging the four counts as set forth in the complaint by the State, that further proceedings be scheduled in the circuit court in connection

with that information, beginning with an arraignment which, unless waived, is to be scheduled a week from Friday, July 30th, at 9 a.m.

MS. BRINKMAN: Thank you, your Honor.

THE COURT: Mr. Mirque, anything else you'd wish to address at this time?

MR. MIRQUE: No, your Honor.

THE COURT: Ms. Krause?

MS. KRAUSE: One moment, your Honor.

No, your Honor.

THE COURT: Ms. Brinkman, anything else that you have?

MS. BRINKMAN: No, your Honor. I believe the Defendants are being held without bond, and if there were bond I would ask that--

THE COURT: There will be no bond--

MS. BRINKMAN: All right.

THE COURT: --in view that they have, I assumed, deferred on a motion, and agree to the rules of being remanded without bond for expedited trial.

MS. BRINKMAN: Thank you, and we intend to comply.

THE COURT: Are you intending, either of you, to waive the arraignment or--

MS. KRAUSE: We'll have arraignment, your Honor.

THE COURT: All right, good. Thank you.

MR. MIRQUE: Thank you, your Honor.

THE COURT: We're adjourned.

(At 3:26 p.m. proceedings concluded.)

* * * * *

STATE OF MICHIGAN)
) SS
COUNTY OF KENT)

I certify that this transcript, consisting of 51 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in the matter of the People of the State of Michigan v Daniel Arthur Turner and Stephen Dennis Turner on July 20, 1993, as recorded by Diana M. Benzer, CER 3270, and as transcribed by me, Annette L. Bailey, CER 4218, to the best of my ability.

8/4/93
Date

Annette L. Bailey
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A Yes.

Q Have to say yes or no, honey, okay? Were these good things or bad things that you had heard?

A Bad.

Q Did people make fun of them?

A No, they just talked about 'em.

Q Okay. What kind of bad things did you hear them called?

A That little girl that--it was a girl that was sitting on a rock, and she--they--the man with the lipstick came past, and she said, "That's the man who did something to my sister." And then I said, "Uh-uh," and then [s]he say, "Watch and see. He'll catch you one day."

Q Excuse me, honey, did they--did you hear anyone call them names?

A No.

Q Okay. But just bad things about them? Is that--was that a yes?

A Yes.

Q Shake your head yes, okay, Now this event took place on July 7th, is that what you remember?

A Yes.

Q That is was July 7th? And you were outside playing on the steps?

A Yes.

Q Were those the steps to your apartment door?

in the back bedroom?

A No.

Q Did you actually see the brother leave the back bedroom?

A Which one?

Q All right, you've described two men. One had red lipstick on, right?

A Yes.

Q And he's the one who took you into the back bedroom.

A Yes.

Q And while you were in the back bedroom his brother came in.

A Yes.

Q Did the brother have lipstick on?

A No.

Q Okay. So maybe it'd be easier if we talk about the man with lipstick and the man without lipstick. Would that be easier for you?

A Yes.

Q Okay, good. Did the man with(out) the lipstick leave the back room?

A Yes.

Q And when he left the room, you and the man with the lipstick were still in the room?

A No.

Q No, you guys left at the same time?

A No.

A We went to her house.

Q Okay. And what did you talk about when you were at her house?

A When Cynthia was coming back and stuff.

Q How long were you at India's house?

A 'Bout two or one minute.

Q One or two minutes?

A Mn-hnn.

Q Not very long?

A No.

Q Okay. Now have you seen either of these two guys in the neighborhood?

A Yes.

Q And did you see them wearing dresses sometimes?

A No, but I seen one wearing a short [skirt].

Q Have you ever seen the guy with the--who you say had lipstick on ever wear a dress?

A No.

Q Did you ever hear anybody say that the guy with the lipstick wore a dress?

A No.

Q You didn't kinda giggle if you had heard that these guys wear dresses?

A Well, I laugh when me and my little sister, we-we used to run past the window, and every time we saw 'em with a short

[skirt] we'll go back and laugh.

Q What did you see when you ran past those windows? Did you see 'em in sort of funny clothes?

A Yes.

Q Yeah. You and your little sister used to run back and forth, and sorta try to sneak a look?

A Yeah.

Q Okay. Did your parents know that you were sort of sneaking looks at these two guys?

A No, we--well, I told my little sister that I was gonna get a camera and take pictures of 'em, and she start giggling at me.

Q Did your parents ever say never to go to those guys house because they're kind of strange?

A Well, they--I told my dad that a man downstairs was strange and--and--and that he looks at me weird, and my dad said not to go there. And then he said don't--my mom and dad tells me not to talk to strangers, and not to go--go over their house or in.

Q Sure, sure. Did your daddy ever say what would happen if he ever caught you down there?

A Yes.

Q What did he say he would do to you?

A If he woulda caught me down there?

Q Yeah. Did he ever tell you what would happen?