STATE OF MICHIGAN

IN THE COURT OF APPEALS

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

-vs-

L.C. No. 93-63014
Docket No. 172923

DANIEL ARTHUR TURNER,

Defendant/Appellant.

ARTHUR LEE NORMAN (P23786)
Attorney for the Defendant
615 Griswold - Suite 405
Detroit, Michigan 48226-3901
(313) 961-6511

PETITION TO FILE SUPPLEMENTAL BRIEF

NOW COMES the Defendant/Appellant herein, DANIEL ARTHUR TURNER, by and through his attorney, ARTHUR LEE NORMAN, and Petitions this Honorable Court to file a Supplemental Brief in this case and in support thereof states as follows:

1. That after filing the Appellant Brief on Appeal, counsel for the Appellant has become aware of central issues not raised in the original Brief.

2. That the Appellant's Brief was filed on September 28, 1993, and as of yet, has not been submitted for formal hearing.

3. That the issues are constitutional issues involving equal protection of the law under the Fourteenth Amendment to the United States Constitution as set forth in the proposed Supplemental Brief attached hereto.

4. That a substantial injustice may occur unless your Defendant is permitted to supplement this Brief.

WHEREFORE, your Defendant/Appellant prays this Honorable Court permit him to supplement his Brief along with such other and further relief deemed just and advisable in the premises.

/s/
ARTHUR LEE NORMAN (P22786)
Attorney for Defendant
615 Griswold - Suite 405
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(313) 961-5611

Dated: November 21, 1994

AFFIDAVIT IN SUPPORT

STATE OF MICHIGAN)
(S
COUNTY OF WAYNE)

ARTHUR LEE NORMAN, who being first duly sworn, deposes and states that he has read the within Petition and that all things contained therein are true to the best of his knowledge and belief.

/s/
ARTHUR LEE NORMAN

Subscribed and sworn before me this
21th day November, 1994

/s/
CAROL ANN MCDONAL
Notary Public, Wayne County, Michigan
My JCommission Expires: 07/08/97

STATE OF MICHIGAN

IN THE COURT OF APPEALS

THE PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff/Appellee,

-vs-

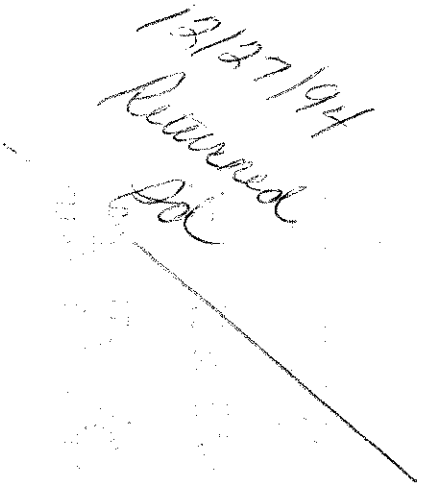
L.C. No. 93-63014
Docket No. 172928

DANIEL ARTHUR TURNER,

Defendant/Appellant.
_____/

APPELLANT'S SUPPLEMENTAL BRIEF ON APPEAL

NO ORAL ARGUMENT REQUESTED



In Pro Per:
Daniel Arthur Turner, Defendant

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The Defendant says that the answer is, "Yes".

The People would contend that the answer is, "No".

II

Whether or not the Defendant was denied a fair trial and due process of law because the Court prevented the treating physician form testifying about his factual opinion as to whether or not the victim was actually assaulted?

The Defendant says that the answer is, "Yes".

The People would contend that the answer is, "No".

III

Whether or not the Defendant's rights under the Fourth Amendment were violated in the execution of the Search Warrant in this case?

The Defendant says that the answer is, "Yes".

The People would contend that the answer is, "No".

IV

Whether or not the Defendant's constitutional rights were denied because he was unconstitutional confined without bail?

The Defendant says that the answer is, "Yes".

The People would contend that the answer is, "No".

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Whether or not the Defendant's conviction should be set aside because it amounts to a violation of his rights under the Treaty of Fort Stanwick?

The Defendant says that the answer is, "Yes".

The People would contend that the answer is, "No".

LAW AND ARGUMENT

ISSUE I

Whether or not the Defendant was denied a fair trial because of the improper instruction on the asportation element of Kidnapping?

The Defendant says that the answer is, "Yes".

The People would contend that the answer is, "No".

The jury must be instructed fully and accurately as to all elements which constitutes the violation of any given law. For example, in the trial Court; instructions to the jury about the element of asportation, the Judge stated that any incidental movement --however slight--is sufficient to satisfy the requirements of asportation. However, the Courts have held as stated in People v Charles Thompson, 117 Mich. App. 522; 524-525, that:

> "In People v Adams, 389 Mich. 222; 205 NW2d 415 (1973), the Court held that it was necessary to interpolate an element

> of asportation or its equivalent in the crime of Kidnapping, to prevent the Kidnapping Statute from beginning unconstitutionally overboard. The necessary asportation could not merely be incidental to the commission of another underlying lesser crime. In People v Barker, 411 Mich. 291; 307 NW2d 61 (1981), the Court held that the Adams rule applied to cases in which the underlying crime is co-equal in punishment to Kidnapping. Kidnapping and First Degree Criminal Sexual Conduct are co-equal in punishment."

The conviction for there cases, plus others with the same issues, such as People v White, 89 Mich. App. 726 (1979), were all reversed and remanded to the trial Court.

In whereas the jury is to be instructed on only the factual elements of the testimony and other such evidence as presented during the trial, and in line with any theories as put forth by the prosecutor or defense counsel, the Court clearly and prejudiced the jury by the utter confusion of suggesting that every possible scenario that could constitute an act of Criminal Sexual Conduct in the First Degree, even going outside the rim of evidence and testimony provided during the trial. For example, -- "inserting a pencil into any opening or body cavity of the body". People v White, supra; People v Newman, 35 Mich. App. 193

ISSUE II

> Whether or not the Defendant was denied a fair trial and due process of law because tne Court prevented the treating physician form testifying about his factual opinion as to whether or not the victim was actually assaulted?
>
> The Defendant says that the answer is, "Yes".

The People would contend that the answer is, "No".

The trial Court prevented Dr. Stephen H. Perry, from providing his factual opinion as to whether or not the victim was actually assaulted by someone in any or fashion, as provided in MRE 702, which reads as follows:

> "If the Court determines that recognized scientific, technical, or other specialized knowledge will assist the trier-of-fact to understand the evidence or to determine a fact issue, it witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

Clearly, Dr. Perry was an expert who had been authorized by the Court to testify as an expert. In People v Holiday, 114 Mich. App. 560; 566-577; 376 NW2d 154 (1985), the Court held that:

> "A limitation on cross-examination which prevents a defendant from placing before the jury facts upon which an inference of bias, prejudice or lack of credibility of a witness may be drawn, amounts to an abuse of discretion and can constitute a denial of the right of confrontation."

ISSUE III

Whether or not the Defendant's rights under the Fourth Amendment were violated in the execution of the Search Warrant in this case?

The Defendant says that the answer is, "Yes".

The People would contend that the answer is, "No".

The Defendant challenges the propriety of the Search Warrant in this case and the evidence admitted pursuant thereto. In People v Marshall, 69 Mich. App. 288; 244 NW 451 (1976), the Court concluded that the U.S. Constitution Amendment 4, requires that a Warrant to Arrest or Search, be supported by a showing of probable cause in the traditional sense. That is, in U.S. v Outland, 345 F. Supp. 1250 (1972), the Court found that the Fourth Amendment requires that facts and circumstances, not mere conclusions be presented to the Magistrate in order to present a showing of probable cause upon which a Search Warrant may be issued. That same holding was continued in People v Lovett, 85 Mich. App. 534; 272 NW2d 126 (1978), where the Court stated that a Search Warrant can issue only upon a finding of probable cause.

In People v Staffney, 70 Mich. App. 737; 246 NW2d 346 (1976), the Court concluded that after inaccurate statements are stricken from Affidavit in support of Search Warrants, the Affidavit must then be examined to determine whether the issuing Judge could find probable cause existed. The Defendant contends that the language giving rise to the issuance of the Search Warrant in this case was excessively vague and therefore, questionable. The intentional vagueness wrongfully permitted police officers to exercise their own undirected discretion in determining what to seize. As stated on U.S. v Garner, 537 F.2d 1861 (1976), warrants may not authorize general searches nor may they

permit police officers to exercise undirected discretion in determining what to seize.

In People v Hertz, 223 Mich. 170; 193 NW 781 (1923), the Fourth Amendment requires the warrant to particularly describe the items to be seized. Furthermore, in U.S. v Garner, supra, the Court found that a Search Warrant authorizing the seizure of "all" was overbroad, rendering related items so seized pursuant to the warrant inadmissible. Again, in U.S. v Townsend, 394 F.Supp. 736 (1975), the Court found that a Search Warrant commanding the seizure of "any and all" failed to satisfy the requirement of the Fourth Amendment that things to be seized must be described with particularity, and that the phrase "any and all" was impermissibly vague. The description was insufficiently vague because a more exact description was not a virtual impossibility and because the requisite of particularity could not be supplied by the Affidavit which was more, rather than less vague. That very same defect is present in both the Search Warrant and prosecutor's Affidavit for the same.

ISSUE IV

Whether or not the Defendant's constitutional rights were denied because he was unconstitutional confined without bail?

The Defendant says that the answer is, "Yes".

The People would contend that the answer is, "No".

The Defendant contends that he was held in pretrial confinement without bail being set for much longer than the 91 days as allowed in Section 15 of Act. I to the 1963 Constitution of the State of Michigan. The trial of these charges did not commence until 144 days after the date on which admission to bail was denied. Nor was a hearing held to set bail 90 days as set forth in the State Constitution.

ISSUE V

> Whether or not the Defendant's conviction should be set aside because it amounts to a violation of his rights under the Treaty of Fort Stanwick?
>
> The Defendant says that the answer is, "Yes".
>
> The People would contend that the answer is, "No".

The Defendant at sentencing called the Court's attention to the Treaty of Fort Stanwick. The Defendant contends that he misspoke himself, but that he was actually referring to Article VII of the "Conondagua", a 1794 Treaty between the U.S. and the Six Nations of which he is a citizen and a member. (Wisconsin Oneida enrollment No. 6032) The Conondagua Treaty directly curtails and limits the State's authority in this prosecution.

Brief prepared by the Defendant
In Pro Per
Retyped by Arthur Lee Morman

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Dated: November 21, 1994