

# STATE APPELLATE DEFENDER OFFICE

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February 17, 1998

Mr. Stephen Dennis Turner  
235530  
Carson City Regional Facility  
10522 Boyer Road  
P. O. Box 5000  
Carson City, MI 48811-5000

Dear Mr. Turner:

Enclosed is a copy of the prosecutor's answer to our Motion for Rehearing recently filed in your case.

Sincerely,

C. Joseph Booker  
Assistant Defender

kt  
Enclosure

11440T  
CSB



## PROSECUTING ATTORNEY

CRIMINAL DIVISION  
416 Hall of Justice  
333 Monroe, N.W.  
Grand Rapids, Michigan 49503  
Telephone (616) 336-3577

WILLIAM A. FORSYTH  
Prosecutor

GARY A. WALLIN  
Chief Assistant Prosecutor

February 10, 1998

Lori Zarzecki, Asst. Clerk  
Michigan Court of Appeals  
350 Ottawa NW  
Grand Rapids MI 49503

RE: People v Stephen Turner  
Court of Appeals No. 173814  
Kent County Circuit Court No. 93-63014

RECEIVED  
FEB 18 1998  
APPELLATE DEFENDER OFFICE

Dear Ms. Zarzecki:

Enclosed for filing of the above captioned cause please find the original and four copies of the PLAINTIFF-APPELLEE'S ANSWER TO DEFENDANT'S MOTION FOR REHEARING.

Also enclosed is Proof of Service.

Sincerely yours,

A handwritten signature in cursive script that reads "David M. LaGrand/jm".

David M. LaGrand (P47106)  
Assistant Prosecuting Attorney

Enclosures

cc: C. Joseph Booker

STATE OF MICHIGAN

IN THE COURT OF APPEALS

PEOPLE OF THE STATE  
OF MICHIGAN,

Plaintiff-Appellee,

vs

STEPHEN DENNIS TURNER,

Defendant-Appellant.

Court of Appeals  
No. 173814

Kent County Circuit Court  
No. 93-63014

PROOF OF SERVICE

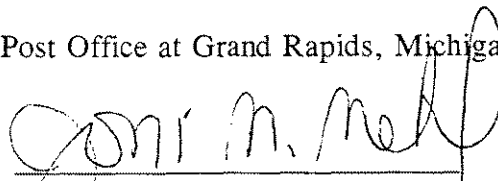
PLAINTIFF-APPELLEE'S ANSWER  
TO DEFENDANT'S MOTION FOR  
REHEARING

State of Michigan )  
                                  )  
County of Kent    )

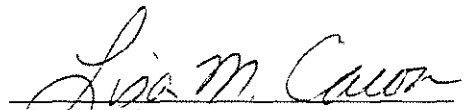
Joni M. Mehl being first duly sworn, deposes and says that on the 10th day of February, 1998, she served a copy of the above captioned cause upon C. Joseph Booker by regular mail, by then and there placing the same in an envelope, postage prepaid, properly addressed:

Mr. C. Joseph Booker  
Attorney at Law  
Suite 3300 Penobscot  
645 Griswold  
Detroit, MI 48226-4215

and placing the same in the United States Post Office at Grand Rapids, Michigan.

  
\_\_\_\_\_  
Joni M. Mehl

Subscribed and sworn to before me this 10th day of February, 1998.

  
\_\_\_\_\_  
Lisa M. Caron  
Notary Public, Kent County, MI  
My commission expires: 04/18/98

STATE OF MICHIGAN

IN THE COURT OF APPEALS

PEOPLE OF THE STATE  
OF MICHIGAN,

Plaintiff-Appellee,

-vs-

STEPHEN TURNER,

Defendant-Appellant.  
\_\_\_\_\_ /

Court of Appeals  
No. 173814

Circuit Court  
No. 93-63014

**ANSWER TO DEFENDANT'S  
MOTION FOR REHEARING**

William A. Forsyth (P23770)  
Kent County Prosecuting Attorney

Timothy K. McMorrow (P25386)  
Chief Appellate Attorney

David M. LaGrand (P47106)  
Assistant Prosecuting Attorney

Business Address:  
416 Hall of Justice  
333 Monroe NW  
Grand Rapids MI 49503  
(616) 774-3577

NOW COMES Plaintiff-Appellee, the People of the State of Michigan, and in opposition to Defendant's Motion for Rehearing says as follows:

1. In its opinion in this case, this Court found no evidence that Defendant aided and abetted first degree CSC, and rejected the prosecutor's theory at trial that Defendant was culpable for aiding and first degree CSC because of actions following the assault. Defendant argues that as a consequence, Defendant could not have been found guilty of aiding and abetting second degree CSC. This argument essentially conflates the two rulings by this Court. As noted by Plaintiff on appeal, it is an elementary matter of law that the jury is not bound by the Prosecutions' theory of the case, but rather convictions must be based on evidence. CJI 2d 2.3. This Court cites at length in its opinion the evidence presented at trial supporting a conviction of aiding and abetting second degree CSC. Plaintiff argued on appeal that this same evidence would have supported a conviction for aiding and abetting first degree CSC. The difference between the two charges hinges only on the degree of severity of the acts committed by Codefendant Dennis Turner while Defendant was actively restraining Victim. While Defendant places great importance on the Prosecutor's "theory" at trial, the simple fact remains that the prosecutor produced evidence at trial which completely supports a conviction for aiding and abetting second degree CSC.

2. This Court does not need to reverse its position on the need to remand for resentencing on the count of second degree CSC. Defendant cites cases in which this court remanded for resentencing on remaining convictions after dismissing other convictions, but cites no authority mandating this procedure.

**RELIEF**


WHEREFORE, for the reasons stated herein, the People respectfully pray that Defendant's Motion for Rehearing be DENIED.

Respectfully submitted,

William A. Forsyth  
Kent County Prosecuting Attorney

DATED:

2/19/98

A handwritten signature in black ink, appearing to read 'D. LaGrand', written over a horizontal line.

David M. LaGrand (P47106)  
Assistant Prosecuting Attorney